

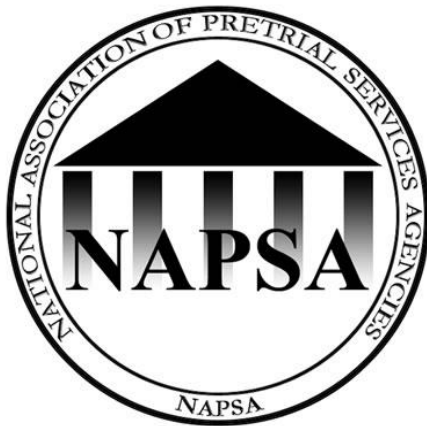
Welcome to the NAPSA Pretrial Fundamentals Curriculum

Session 1: Pretrial 101

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PRETRIAL

BOOT CAMP



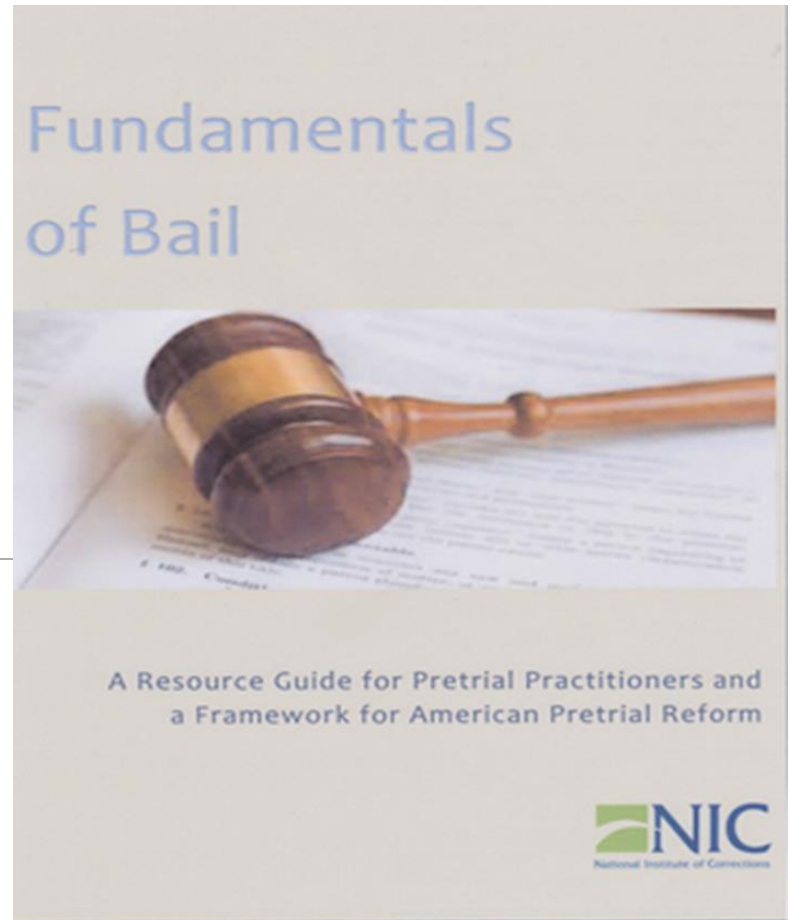
Stations

1. Key Concepts in Bail Setting and Pretrial Diversion
2. Interviewing Techniques
3. Assessment Tools
4. Pretrial Assessment and Recommendations
5. Pretrial Supervision
6. Measuring What Matters

STATION 1

KEY CONCEPTS OF BAIL AND PRETRIAL DIVERSION

By Timothy Schnacke



Bail

Definition

- The process of releasing a defendant from custody

Purpose

- To effectuate and maximize pretrial release

Purpose of conditioning bail

- Provide reasonable assurance of victim & public safety
- Provide reasonable assurance of court appearance

Bond

An obligation or promise

Bail bond: the obligation by the defendant, or the defendant and some surety, to the court

Financial (secured or unsecured), or non-financial

Right to Bail

Judiciary Act of 1789

Not a guarantee of release

When granted by federal or state law, the right to be released from jail or other government custody through the bail process

Not a federal constitutional right, but included in 41 state constitutions

Excessive Bail

“I have no objection to it, but as it seems to have no meaning in it, I do not think it necessary. What is meant by the term ‘excessive bail?’” - Congressman Lattimore re: 8th Amendment



Least Restrictive

If government restricts liberty to achieve a legitimate goal, it must employ the least restrictive means possible to achieve that goal

Bail conditions -> least restrictive needed to reasonably assure public safety and court appearance

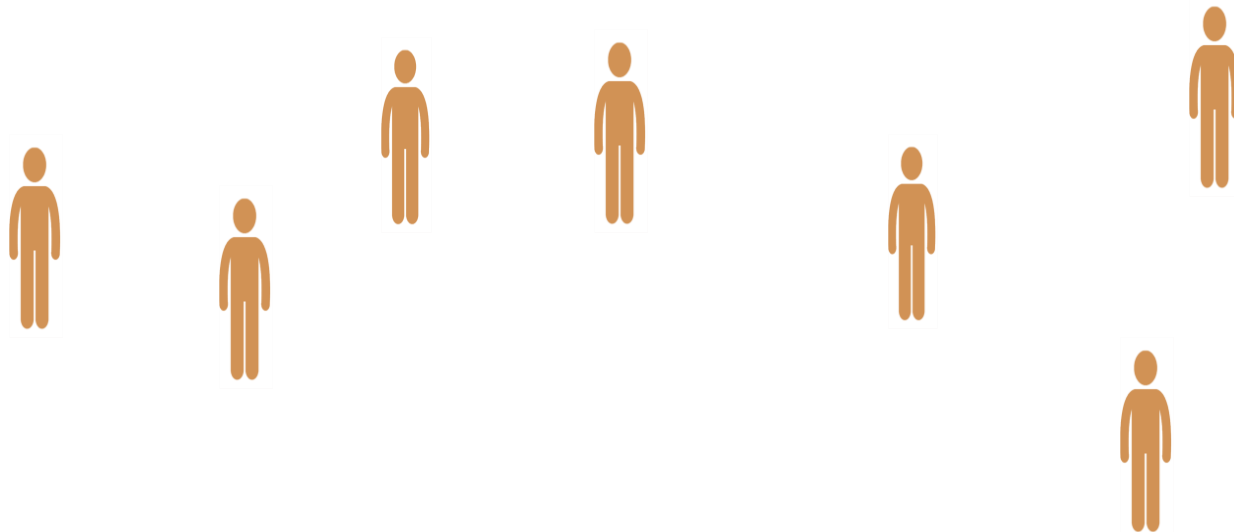
Reasonable Assurance of Safety and Appearance

“Assurance”: Something that inspires or tends to inspire confidence

Modified by “reasonable”

Individualized Decision Making

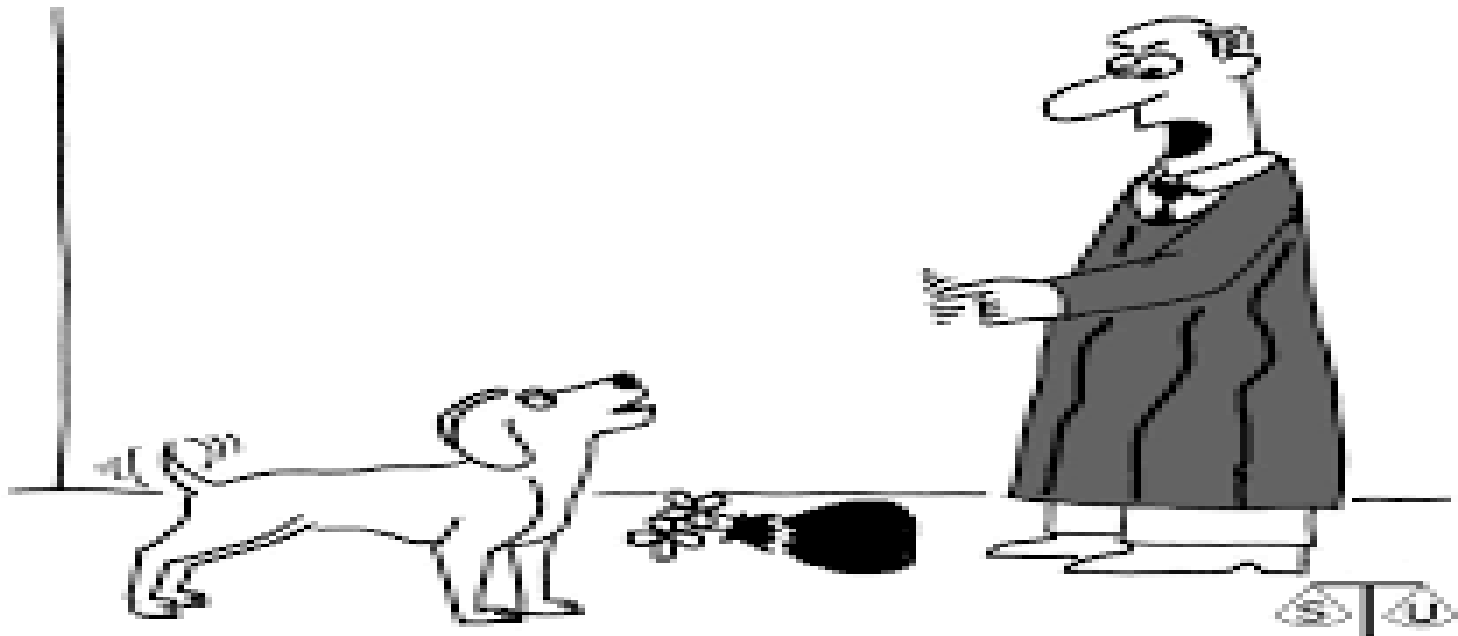
Stack v. Boyle (1951) – U.S. Supreme Court: bail must be set based on the characteristics of each individual defendant



Presumption of Innocence

Stu's Views

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Alleged BAD dog! Alleged BAD dog!

Preventive Detention

Provided in Federal Bail Reform Act 1984

Holding a defendant without bail to prevent either flight or danger to the community

Available under federal law and in about half the states

Challenged in *U.S. v. Salerno*

Pretrial Diversion

Key Components:

- Voluntary
- Provides alternative case processing
- When completed charges are dismissed

Purpose:

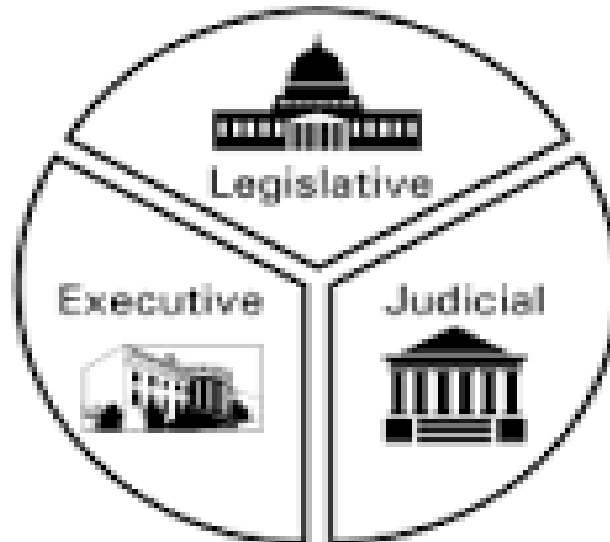
- Address root causes
- Reduce stigma
- Restore victims
- Preserve system resources

Separation of Powers

Legislative branch passes diversion laws

Executive branch (prosecutors) decide who can be admitted to diversion

Judicial branch checks against any prosecutorial discretion



Self-Incrimination

5th Amendment: no person “shall be compelled...to be a witness against himself”



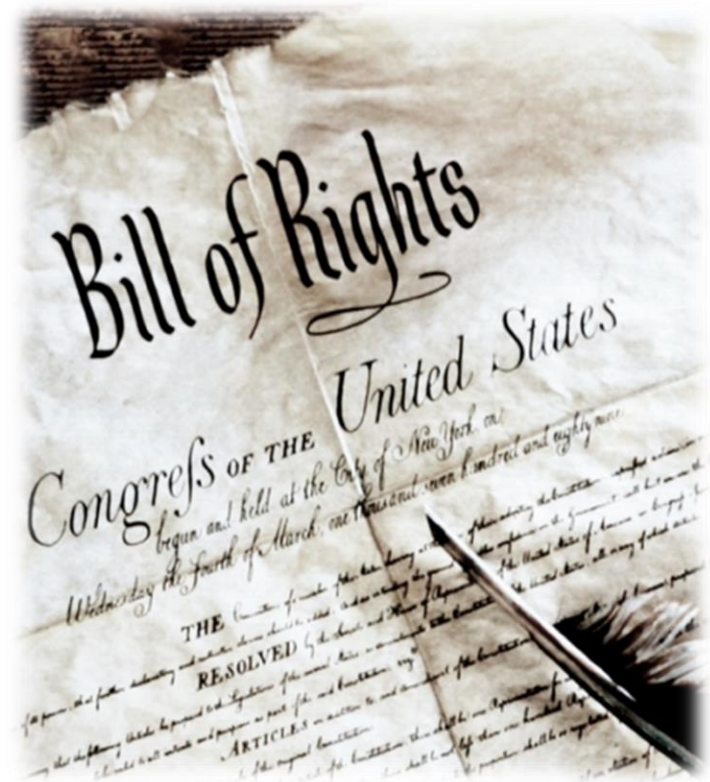
6th Amendment Rights

Speedy trial

Trial by jury

Confront witnesses

Assistance of counsel



Due Process

5th and 14th Amendments

“No person shall...be deprived of life, liberty, or property without due process of law.”

Fundamental fairness of laws (substantive due process) and legal proceedings (procedural due process)

Equal Protection

14th Amendment

Similarly situated individuals should be treated similarly



Criteria in Making Bail Decisions

Start with presumption of ROR

Presumption must be overcome to set any conditions

Any conditions must be least restrictive needed to provide reasonable assurance

Limits on use of financial conditions

Detention for those with unmanageable risks, where allowed by law

Criteria for Pretrial Diversion Decisions

Not based on race, gender, income, etc.

Should be in writing

Participation voluntary/consult with counsel

No prior admission of guilt

Least restrictive conditions to meet the plan's goals

Discussion Question

How do the concepts presented thus far compare with how bail/pretrial diversion operates in your jurisdiction?

Game Time!



What's Wrong With This Picture?

From the local newspaper on a defendant who had been arrested for drug distribution: “The defendant is being held in the county jail on a \$1,500 bail.”



What's Wrong With This Picture?

From a state appeals court opinion: “The main purpose of bail is to guarantee to the State and to the Court that the defendant will appear for all court hearings when required and will not endanger the safety of the community.”



What's Wrong With This Picture?

From a newspaper article citing what it calls an innovative practice: “In a move that has angered local bail bondsmen, instead of setting money bonds on lower risk defendants, judges in _____ County are now ordering those defendants into a new electronic monitoring program.”

What's Wrong With This Picture?

From a comment to an on-line local newspaper article in a right to bail state, on a judge who released a defendant pending trial: “That judge should be kicked off the bench for releasing that defendant.”

What's Wrong With This Picture?

After the judge set a \$50,000 bond on a defendant charged with sexual abuse of a child, the prosecutor tells the media: “The judge did the right thing by making sure this child abuser stays where he belongs – behind bars.”



What's Wrong With This Picture?

From a press release: “The police chief and district attorney have announced plans for a new pretrial diversion effort whereby police officers in the field will have the discretion to offer pretrial diversion placement to persons with no prior convictions who would be facing non-violent misdemeanor offenses, provided that the person admit guilt to the police officer.”

What's Wrong With This Picture?

From a newspaper article: “Over the objections of the prosecutor, a circuit court judge has ordered a defendant into a pretrial diversion program. The prosecutor had declined to offer the defendant diversion, citing the defendant’s failure to meet the criteria, which includes no prior convictions.”

As our nation was being formed, from which European country did our laws, including laws relating to bail, come?

- A. France
- B. England
- C. Italy
- D. Germany



Which of the following established under US law that “excessive bail shall not be required?”

- A. Judiciary Act of 1789
- B. 4th Amendment to the U.S. Constitution
- C. 8th Amendment to the U.S. Constitution
- D. US Supreme Court in *U.S. v. Salerno*



The definition of “bail” is:

- A. The dollar amount that the defendant must pay to be released from jail.
- B. The process of securing the release of a defendant from jail.
- C. The defendant’s promise to appear.
- D. None of the Above



What has the U.S. Supreme Court said about how bail decisions must be made?

- A. Individualized to each defendant.
- B. Based upon the charge.
- C. Reflect a defendant's ability to pay a financial bond amount.
- D. Reflect prevailing community standards about who should be released



How has the US Supreme Court defined what is meant by “excessive bail?”

- A. If the defendant cannot meet it.
- B. If it is calculated to be just above what a defendant can meet.
- C. If it is grossly disproportionate to the bail practices in the jurisdiction.
- D. If it is in excess of what is required to reasonably assure a constitutionally valid goal.

According to Standards and most statutes, every bail decision should start with what presumption?

- A. For the setting of an ROR bond.
- B. For the setting of a financial bond.
- C. For the imposition of an electronic monitoring condition.
- D. For Detention without Bond

Due process is a key legal concept in pretrial. What does due process mean?

- A. The fundamental fairness of laws and legal proceedings.
- B. The efficient processing of criminal cases.
- C. Giving due consideration to victims.
- D. The rights provided to the government in prosecuting criminal cases



