

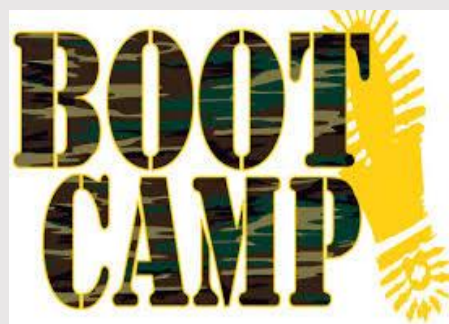
# NAPSA Annual Conference and Training Institute

UPDATE



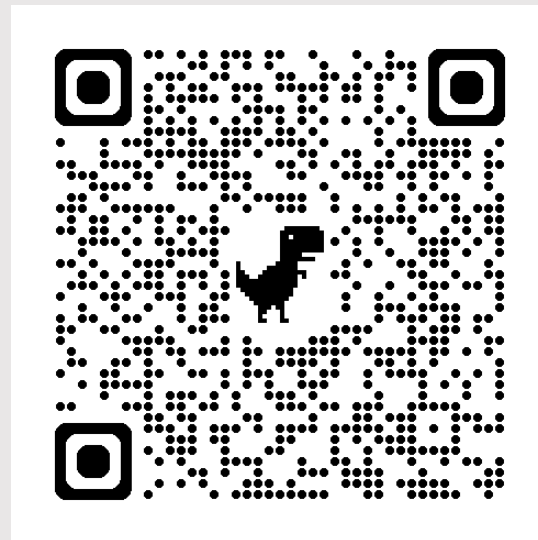
# NAPSA Fundamental Sessions

1. Key Concepts in Bail and Diversion
2. Interviewing Techniques
3. Implementing Pretrial Assessment Tools
4. Utilizing Assessment Results for Bail and Diversion Recommendations
5. Aspects of Supervision
6. Measuring what matters

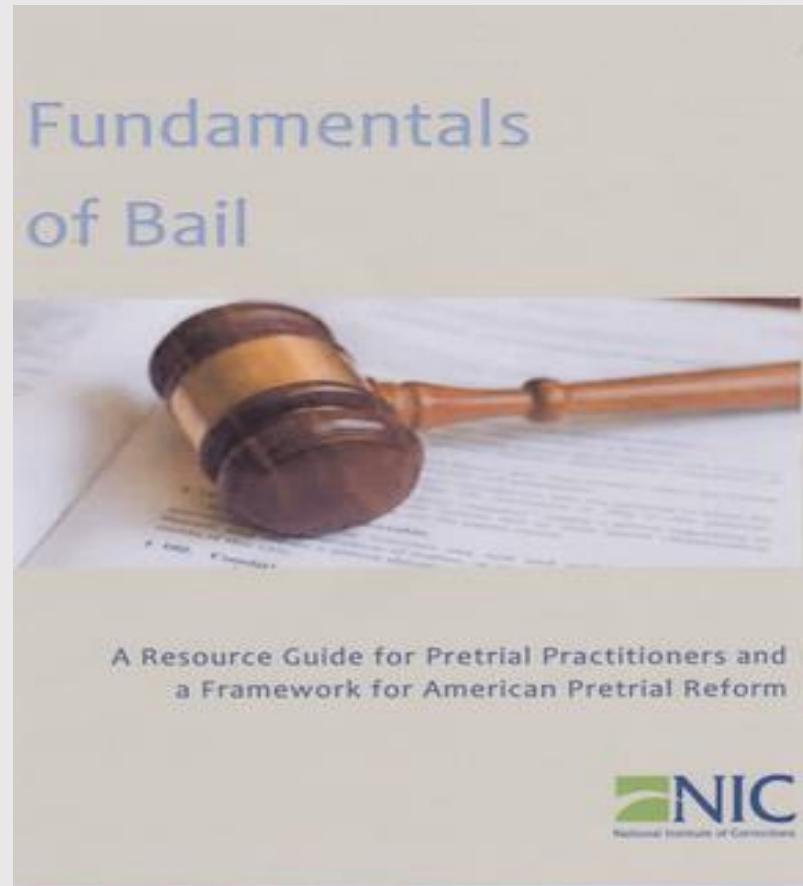


# PRETRIAL 101

NAPSA Standards



# RECOMMENDED READING- Timothy Schnacke



# BAIL versus BOND

\* NAPSA Standards 1.0-1.10

*BAIL: The process of releasing a person from custody*

- Purpose
  - Effectuate and maximize pretrial release
- Purpose of conditioning bail
  - Provide reasonable assurance of victim & public safety and court appearance

*BOND: An obligation or promise*

- Bail bond
  - Obligation by the person accused, or the person accused and some surety, to the court
- Financial
  - Secured or unsecured or non-financial



# Right to Bail

- 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

\* NAPSA Standards 3.1-3.2



# Criteria in Making Bail Decisions \*NAPSA Standards 1.1-1.10

- 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

What does your jurisdiction do?



# Excessive Bail

\*NAPSA Standard 1.4

- *“The clause seems to express a great deal of humanity, on which account I have no objection to it; but as it seems to have no meaning in it, I do not think it necessary.” ~ Livermore*
- What is meant by the terms excessive bail? Who are to be judges?
- What is the cost of incarceration?



# Least Restrictive

\*NAPSA Standard 2.9

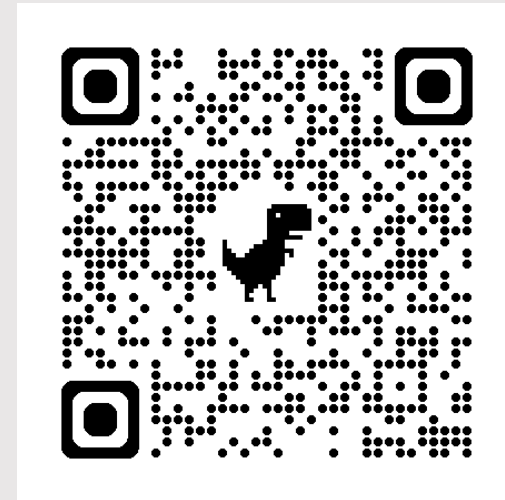
- If government restricts liberty to achieve a legitimate goal, it must employ the least restrictive means possible to achieve that goal
- Bond conditions: least restrictive needed to reasonably assure public safety and court appearance



# Reasonable Assurance of Safety and Appearance

\*NAPSA Standard 1.4

- “Assurance”: Something that inspires or tends to inspire confidence
- Modified by “Reasonable”
- No guarantees
- There will be failures



# Presumption of Innocence

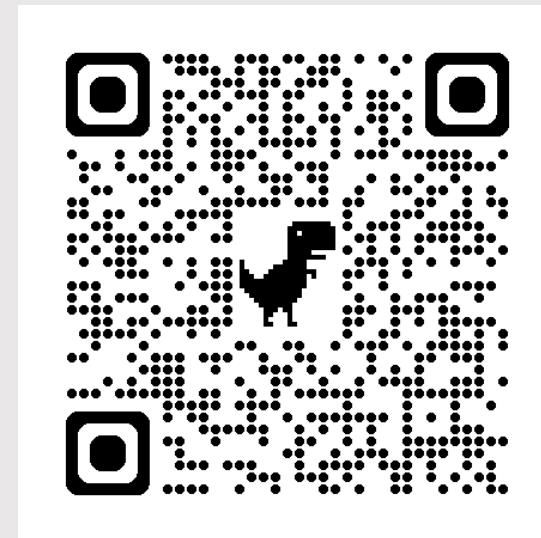
Any personal Examples or Experiences to the contrary?

We're all  
[REDACTED] until  
proven [REDACTED].



# Public Safety Consideration

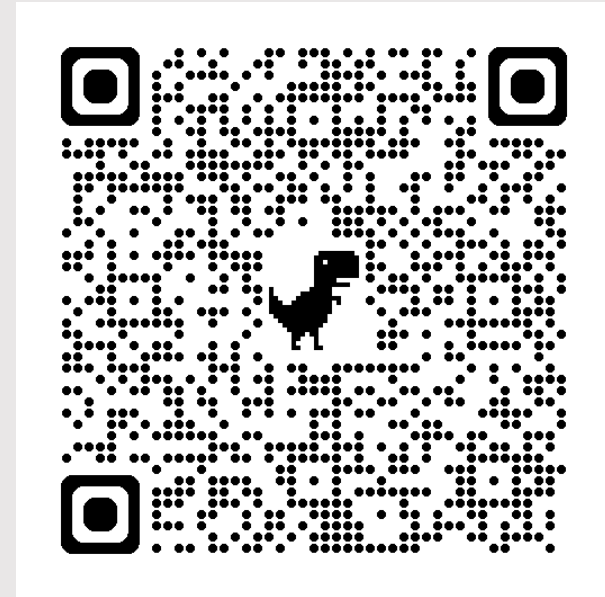
- *United States v. Salerno* (1987) – U.S. Supreme Court: *The Bail Reform Act of 1984 (Act) requires courts to detain prior to trial arrestees charged with certain serious **felonies** if the Government demonstrates by clear and convincing evidence, after an adversary hearing, that no release conditions "will reasonably assure . . . the safety of any other person and the community."*



# Preventive Detention

\*NAPSA Standard 2.2

- Holding a person without bail to prevent either flight or danger to the community
- Available under federal law and in about half the states – typically found in statute as capital crimes



# Pretrial Diversion/Pretrial Intervention/Deferred Prosecution

## Key Components:

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

## Purpose:

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



What does your jurisdiction offer?



## Criteria for Pretrial Diversion Decisions \*NAPSA Standard 3.3

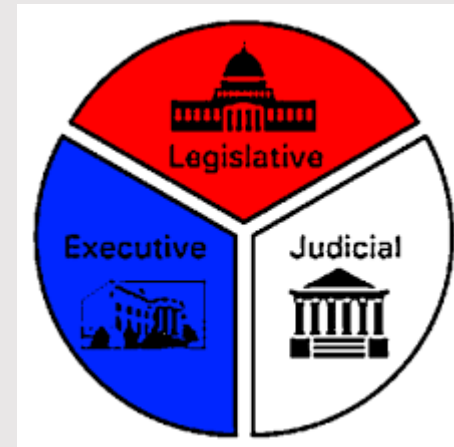
- Not based on race, gender, income, etc.
- Should be in writing
- Participation voluntary/consult with counsel
- No prior admission of guilt
- Least restrictive conditions to meet the plan's goals



# Separation of Powers

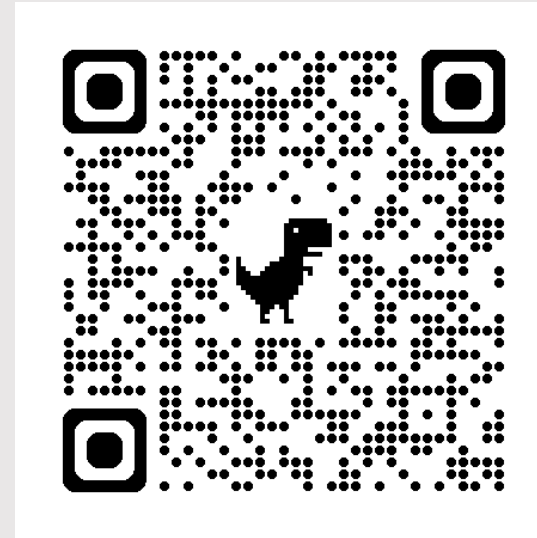
- Legislative branch passes diversion laws
- Executive branch (prosecutors) decide who can be admitted to diversion
- Judicial branch checks against any prosecutorial discretion

\*There is some variation across states



# 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments

- 5th Amendment: no person “shall be compelled...to be a witness against himself”
- 6<sup>th</sup> Amendment
  - Speedy trial
  - Trial by jury
  - Confront witnesses
  - Assistance of counsel
- 14<sup>th</sup> Amendment: Similarly situated individuals should be treated similarly



# Discussion Question

Is your jurisdiction meeting the standards?



# What's Wrong With This Picture?

From the local newspaper on a person who had been arrested for drug distribution: “The person 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 person 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 people, judges in \_\_\_\_\_ County are now ordering those people 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 person pending trial: “That judge should be kicked off the bench for releasing that person.”



# What's Wrong With This Picture?

After the judge set a \$50,000 bond on a person 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 person into a pretrial diversion program. The prosecutor had declined to offer the person diversion, citing the person’s failure to meet the criteria, which includes no prior convictions.”



