Note: identified as Article 6 but Release of Defendants is Article 8 in Final Draft and Report - Nov. 1972

CRIMINAL LAW REVISION COMMISSION
311 State Capitol
Salem, Oregon

CRIMINAL PROCEDURE

PART III. ARRAIGNMENT AND PRE-TRIAL PROVISIONS

ARTICLE 6. ARRAIGNMENT AND RELATED PROCEDURES

Release of Defendants

Preliminary Draft No. 1; May 1972

Reporter: Bert Gustafson

Subcommittee No. 2

ARTICLE 6. ARRAIGNMENT AND RELATED PROCEDURES

Release of Defendants

Preliminary Draft No. 1; May 1972

Section 1. Release of defendants; definitions. As used in this Article, unless the context requires otherwise:

Existing Law
ORS chap 140

(1) "Conditional release" means a non-security release which imposes regulations on the activities and associations of the defendant.

(2) "Magistrate" has the meaning provided for this term in ORS 133.030.

(3) "Personal recognizance" means the release of a defendant upon his promise to appear in court at all appropriate times.

(4) "Release" means temporary or partial freedom of a defendant from lawful custody before conviction or after judgment of conviction if defendant has appealed.

(5) "Release agreement" means a sworn writing by the defendant stating the terms of the release and, if applicable, the amount of security.

(6) "Release criteria" includes, but is not limited to, the following:

(a) The defendant's employment status and history and his financial condition;

(b) The nature and extent of his family relationships;

(c) His past and present residences;

(d) Names of persons who agree to assist him in attending court at the proper time;

(e) The nature of the current charge;

(f) The defendant's prior criminal record, if any, and, if he previously has been released pending trial, whether he appeared as required;

(g) Any facts indicating the possibility of violations of law if the defendant is released without regulations; and

(h) Any other facts tending to indicate that the defendant has strong ties to the community and is not likely to flee the jurisdiction.

(7) "Release decision" means a determination by a magistrate, using release criterion, which establishes the form of the release most likely to assure defendant's court appearance.

(8) "Security release" means a release conditioned on a promise to appear in court at all appropriate times which is secured by cash, stocks, bonds or real property.

(9) "Surety" is one who executes a security release and binds himself to pay the security amount if the defendant fails to comply with the release agreement.

COMMENTARY

A. Summary

Section 1 defines eight terms that are unique to the release of defendants pending trial or upon appeal. The ninth term, "magistrate," incorporates the existing definition in ORS 133.030 to make it clear who has the authority to release defendants.

The term "bail" is not used in the Article because of the many meanings that have been attached to this one term.

In some instances "bail" is a noun used to connotate the amount of money or sureties necessary to free the defendant. In other instances, "bail" is a verb meaning to free someone from custody. In order to make the release of the defendant clear and understandable and to show the change in the philosophy of the release in defendants, the word "bail" is retired from active use in Oregon's criminal jurisprudence.

The change in philosophy is not a change in the Constitution as the Constitution grants every criminal the right to be released by sufficient sureties. The change is in effecting this right to release by sufficient sureties. The Article creates the presumption of personal recognizance release which can be overcome by a showing that the defendant is not likely to appear without more assurances.

Subsection (3) defines what personal recognizance is and subsection (6) defines what constitutes release criterion. The release criterion is essentially an assessment of community ties based on the assumption that if the accused has strong community ties, he is more likely to appear in court when directed. The magistrate must use release criterion in making a release decision determining the form of the release.

The magistrate can make a personal recognizance release or a conditional release or a security release. The type of release will be decided at a release hearing and result in a release agreement between the court and the defendant. A security release can be secured by the defendant's assets or the assets of a friend or relative, a surety.

B. Derivation

Subsection (1) defines "conditional release" and is derived from the American Bar Association Standards Relating to Pretrial Release, s. 5.2 (Approved Draft, 1968), hereinafter cited as Pretrial Release. See also, 18 USC s. 3146 (Bail Reform Act of 1966).

Subsection (2) defining "personal recognizance" is derived from Pretrial Release, s. 1.4 (d).

Subsection (3) defining "release" is partially an original draft and partially derived from ORS 140.030.

Subsection (5) defining "release agreement" is an original draft based on the concept that a defendant must have knowledge of the conditions of his release and is partially derived from 18 USC s. 3146 (a) and ORS 140.730.

Subsection (6) sets forth the release criteria which is derived from Pretrial Release s. 4.5 (d) and 18 USC s. 3146 (b).

Subsection (7) defines "release decision" and is an original draft based on Pretrial Release s. 5.1 et seq.

Subsection (8) defines "security release" and is an original draft based on Pretrial Release s. 5.3.

Subsection (9) defines "surety" and is derived from 38 Ill Ann Stat s. 110-1.

C. Relationship to Existing Law.

Subsection (1) defines conditional release, a term that is new to Oregon criminal procedure. Currently there is no specific statute that defines conditional release nor provides for different types of conditions upon release. The specifics of conditional release will be discussed under section 7, Conditional Release.

Subsection (2) incorporates by reference the definition of magistrate contained in ORS 133.030:

> 133.030 Who are magistrates. The following persons are magistrates:
> (1) Judges of the Supreme Court;
> (2) Judges of the Court of Appeals;
> (3) Judges of the circuit court;
> (4) Judges of the district court;
> (5) County judges and justices of the peace; and
> (6) Municipal officers authorized to exercise the powers and perform the duties of a justice of the peace.

The definition of "magistrate" is incorporated in this Article to clarify who has the judicial power to release defendants pending a trial. Also, the provisions of this Article would, conversely, apply to all judicial officers who would be releasing defendants.

Subsection (3) defines what is personal recognizance. Although ORS 140.710 through 140.750 authorizes a magistrate to release a defendant upon his personal recognizance, the current statutes do not define precisely what is "personal recognizance." The Pretrial Release commentary to section 1.4 (d) states:

> "Historically, a recognizance is a written acknowledgment of indebtedness executed to secure the performance of a promise, as for example, a promise to appear for trial. Upon default, the recognizance formed the basis for a judgment of debt against the defendant. However, the term 'release on own recognizance' has come to signify release without bail and, in most jurisdictions, does not involve the execution of a recognizance. It is used where there appears to be no need for financial security. Contemporary usage has so far departed from original concept that clarity is promoted by conforming to common understanding." Pretrial Release at 30.

Subsection (4) defines "release" which is not specifically defined in current law but referred to in terms of "bail." ORS 140.040 (1) states that a magistrate in his discretion may ". . . discharge the defendant from custody. . . ." Also, the definition of "release" or "bail" is implicit in the provisions of ORS chapter 140 even though not specifically defined.

Subsection (5) defines "release agreement" which is not new to Oregon law. ORS 140.730 requires a defendant who is released on his own recognizance to execute a written agreement. However, the definition broadens the scope of release agreement and makes it applicable to every type of release.

Subsection (6) lists eight specific criterion that the releasing magistrate must use in his determination of release. Currently Oregon law has no criterion except the judge's discretion authorized in ORS 140.040. Delaney v. Shobe, 218 Or 626, 346 P2d 126 (1959) listed ten factors to be considered in fixing bail. (See case notes at end of commentary.) These ten factors are essentially incorporated into the nine release criterion proposed by this draft. The factor of the character and strength of the evidence is not a draft criterion except in consideration of whether or not the offense is releasable in cases of murder and treason.

The formation and use of release criteria effect an individualization of the release determination. The state's interest in the timely appearance of the accused for trial competes with the interest of the defendant to be free from custody until convicted and help in the preparation of his defense. Currently, only the magistrate's discretion balances these interests. The criteria are aimed at creating a prediction model for the appearance of the defendant. The assumption underlying the criterion is that:

> ". . . the defendant's roots in the community that give him a stake in remaining in the vicinity and appearing when required. These are his residence, employment, his family ties, his financial condition as well as the familiar and often over-emphasized factors of the nature of the present charge and his prior criminal record." Pretrial Release at 51.

Similar criteria is employed in the Manhattan Bail Project (see Reference materials), the Illinois bail provisions (38 Ill Ann Stat s. 110-5) and the Federal Bail Reform Act of 1966 (18 USC s. 3146).

Subsection (7) defines "release decision", a new term for Oregon criminal procedure. ORS 140.060 requires the magistrate to certify in writing his decision granting or denying the admission to bail. However, there is no specific statute that sets forth the definition of a release decision; the statutes merely state that the magistrate can decide whether or not a defendant may be released. ORS 140.040 states that a magistrate shall set bail if the defendant has been held to answer. Subsection (7) would not change the current law, but it would clarify the decision-making authority of the magistrate.

Subsection (8) defines "security release", a new term for an old procedure. ORS 140.310 through 140.340 sets forth the procedure for depositing money in lieu of an undertaking for bail. "Security release" is a term that includes money, stocks and real property. Although current law provides for deposit of real property, the procedure is cumbersome because it is an undertaking which must be examined by the court as to the sufficiency (ORS 140.100). The current law does not mention the placement of stocks and bonds as security but these equities would have to qualify within the undertaking provisions.

The new term of security release coupled with the later provisions do not change the idea of pledging assets to guarantee the appearance of the defendant. The posting and depositing of security for an appearance is made simpler and more explicit in the proposed draft, by eliminating the antiquated undertaking procedures and replacing it with modern and clear language.

Subsection (9) defines "surety" to distinguish this person from the defendant. The definition of surety changes current law in the respect that formerly the qualifications of bail were quite extensive (ORS 140.120). The current definition is modeled after the Illinois provision and merely states that any person with the asset in the appropriate amount may be a surety.

Section 2. Release assistance agency. (1) The circuit court may establish a Release Assistance Agency that shall, except when impracticable, interview every person detained pursuant to law and charged with an offense within the jurisdiction of the circuit court.

(2) The Release Assistance Agency shall be composed of one or more persons who shall verify release criteria information and timely submit a written report to the appropriate magistrate containing, but not limited to, an evaluation of the release criterion and a recommendation for the form of release.

COMMENTARY

A. Summary

Section 2 creates the authority to establish a Release Assistance Agency under authority of the circuit court. In other jurisdictions this agency has been called the Bail Agency. However, for purposes of consistency, the word "bail" is eliminated and the words "release assistance" are substituted.

The creation of the agency is discretionary with the circuit judge because he may be able to ascertain and verify the release criteria in open court without the assistance of an agency.

If the Release Assistance Agency is created, its responsibility would be to interview the defendants detained in custody, verify the information obtained along the lines of the release criteria contained in section 1, and make a release form recommendation to the magistrate.

B. Derivation

Section 2 is derived from Pretrial Release s. 4.5 and D. C. Court Reform Act of 1970 (P.L. 91-358; D. C. Code Ann ss. 23-1301 et seq.).

C. Relationship to Existing Law

The Oregon statutes have no comparable statute and therefore this provision is new to Oregon criminal procedure.

Most bail projects in the United States employ bail agencies in one form or another to conduct background inquiry of the defendants held in custody. The Manhattan Bail Project, the San Francisco Bail Project and the District of Columbia release procedure all use a bail agency to obtain, sort and verify information relevant to the defendant's release (see reference material for further information).

The commentary to Pretrial Release stated:

> "Some sort of background inquiry is an indispensable part of meaningful bail reform. The basic criticism of the administration of bail has been that magistrates were required to make decisions without having sufficient facts. . . Unfortunately counsel, who is present in only a limited number of cases at this stage, seldom makes a special effort to supply the judicial officer with background facts . . .
>
> "The ideal system would involve the creation of an independent agency answerable directly to the court. . . ." Pretrial Release at 50.

The provisions of this section are made discretionary with the circuit judge because of the many varied situations among districts in Oregon. A magistrate in Eastern Oregon may be very familiar with the defendant and would not need the services of a release assistance agency. However, in metropolitan areas, the magistrates may not be familiar with the defendants and not be able to ascertain information very easily. Therefore, the circuit judges will have to determine for themselves if they need a Release Assistance Agency.

Section 3. Releasable offenses. (1) Except as provided in subsection (2), a defendant shall be released in accordance with this Article.

Existing Law
ORS 140.020 140.030

(2) When the defendant is charged with murder or treason, release shall be denied when circumstances indicate a fair likelihood of conviction and the proof is evident or the presumption strong that the person is guilty.

COMMENTARY

A. Summary

Section 3 embodies the constitutional right to be released from custody pending trial. However, the right is qualified by the non-releasable offenses of treason and murder. Section 3 provides that a person will not be released if he is accused of treason or murder when the proof is evident.

B. Derivation

Subsection (1) is an original draft based upon Oregon Const. Art I, s. 14 and ORS 140.030.

Subsection (2) is derived from Oregon Const. Art I, s. 14, ORS 140.020, 38 Ill Ann Stat 110-4, and State ex rel Connall v. Roth, 258 Or 428, 482 P2d 740 (1971), 92 Adv Sh 419.

C. Relationship to Existing Law

Subsection (1) restates the existing law in different language. Presently, ORS 140.030 sets forth the right to bail when the offense is not murder or treason. The right to bail extends to pretrial release and post conviction appeal by incorporation of the definition in section 1 of "release." The right to bail is a constitutional right embodied in the Oregon Const. Art I s. 14 which is codified in this section.

Subsection (2) follows the dictates of the Oregon Const. Art I s. 14 which makes murder and treason non-bailable offenses when "...when the proof is evident, or the presumption strong." However, the Oregon Supreme Court in Connall stated that the mere showing of the indictment for murder was not sufficient proof or presumption of guilt to deny ~~guilt~~ release. The court went on to say that:

> "Bail should be denied when the circumstances disclosed indicate 'a fair likelihood' that the defendant is in danger of being convicted of murder or treason." 92 Adv Sh at 425.

Subsection (2) is an amalgam of the Connall opinion, the Illinois statute, the Oregon Constitution and ORS 140.020. The new language is used to clearly indicate the crimes not releasable and the amount of proof that must be shown without changing the current law.

Section 4. Release decision. (1) All defendants in lawful custody shall be brought before a magistrate during the first twenty-four hours of custody for a release decision.

Existing Law
ORS 135.190
140.030
140.040
140.720
Chap.140

(2) The defendant shall be released upon his personal recognizance unless release criteria show the defendant is not reasonably likely to appear in court.

(3) Upon a finding that release on personal recognizance is unwarranted, the magistrate shall impose either conditional release or security release. The magistrate shall impose the least onerous condition reasonably likely to assure the defendant's appearance in court.

(4) This section shall be liberally construed to effectuate the purpose of relying upon criminal sanctions instead of financial loss to assure the appearance of the defendant.

COMMENTARY

A. Summary

Section 4 is the activating section that requires a release hearing before a magistrate within 24 hours of being placed in custody. Section 4 creates the presumption of personal recognizance release which can be rebutted by a showing that release criteria indicate the defendant is not reasonably likely to appear in court.

Section 4 gives the magistrate authority to fashion a form of release that will reasonably assure the appearance of the defendant in court. Either a security release or a conditional release may be used by the magistrate, keeping in mind that criminal sanctions should be primarily used instead of financial loss to assure the appearance of the defendant.

B. Derivation

Subsection (1) is derived from Pretrial Release s. 4.1 and subsections (2) and (3) are derived from Pretrial Release s. 5.2 (a).

Subsection (4) is derived from 38 Ill Ann Stat s. 110-2.

C. Relationship to Existing Law

Subsection (1) creates a time limit for the release decision by the magistrate. The specific time is new to Oregon law but is consistent with the philosophy that a defendant should not be needlessly placed in custody pending a trial. Current law, ORS 135.190, requires the arresting officer to take the defendant before a magistrate of the county wherein the arrest is made. However, there is no specific time limitation so the proposed section 4 would, in effect, amend ORS 135.190.

ORS 135.190 reads as follows:

> 135.190. Admission of defendant to bail. When the crime is bailable and the defendant requires it, the officer making the arrest shall take him before a magistrate of the county wherein the arrest is made or the action is pending for the purpose of putting in bail, and thereupon the magistrate shall proceed in respect thereto according to the provisions of ORS chapter 140.

The ABA Standards in Pretrial Release state that the arrested person should be taken before a judicial officer without "unnecessary delay." The Model Code of Pre-Arraignment Procedure (MCPP) s. 4.06 (1) (Tent. Draft No. 1, 1966) states that the defendant: ". . . shall be brought before a judicial officer at the earliest time after the issuance of such complaint that such an officer is available."

The MCPP note to s. 4.06 in part states:

> "The theory of the draft is that once a charge decision has been made, arrested persons must either be released forthwith on bail or taken before a magistrate without delay. Further investigative custody in such a case is unjustified, and it would be impermissible to permit production to be delayed for the purpose of extracting evidence to facilitate conviction."

Subsection (2) creates a presumption in favor of personal recognizance release thereby reversing the present statutory procedure in ORS 140.720. Present procedure places the burden of showing "good cause" for recognizance release upon the defendant. The new procedure will first define what "good cause" is through the establishment of the release criteria. Second, the new procedure will presume that the defendant will be released on his own recognizance unless release criteria indicate otherwise. Thus the burden for showing that the defendant will not appear falls on the very person who desires to keep the person in custody, the district attorney. The burden of showing that the defendant will not appear also falls on the magistrate because he must examine the release criteria to ascertain whether or not the defendant has any community ties and is not likely to flee.

The creation of this presumption is favored by the ABA in their Pretrial Release and is the approach used in the Bail Reform Act of 1966 (18 USC s. 3146). The presumption is also logically in line with the American jurisprudential concept of innocence until proof of guilt. A person is innocent until proven guilty and therefore should not be incarcerated until the guilt is proven. The commentary in Pretrial Release states at page 55:

> "There is in fact an unspoken presumption that bail should be set in every case unless the defendant makes a showing to the contrary. The historical preference for pretrial freedom, as well as recent research indicating that release without bail may safely be increased, supports a reversal of the presumption. This is the approach taken in the Bail Reform Act of 1966, 18 USC 3146. This will not result in the automatic showing of such facts as justify the imposition of conditions on the defendant's release."

Subsection (3) gives the magistrate authority to impose conditional or security release when the release criteria show that the defendant does not have sufficient community ties and therefore is likely not to appear in court when directed. The extent of the conditional and security type releases are discussed in section 7 and section 8 respectively. The commentary to Pretrial Release at page 57 states that:

> ". . . the standard seeks to make the preference for non-monetary conditions on release sharper by clearly separating those conditions from any form of bail. It has been remarked that courts exercising the bail-setting power have almost completely failed to use techniques of supervised release that are well known and widely used after the defendant has been convicted."

Subsection (4) is taken from the Illinois Bail Statute (38 Ill Ann Stat 110-2) which was written so that non-monetary release would be used more in the prosecution of criminal cases. The commentary to the Illinois statute stated that:

> "If history may be relied upon, penal sanctions will be more effective than financial loss, especially when applied promptly."

Subsections (3) and (4) are premised on the Oregon Constitutional provisions of bail. Oregon Const. Art. I, s. 16 states that: "Excessive bail shall not be required...." Oregon Const. Art I, s. 14 requires that: "Offences (sic) except murder, and treason, shall be bailable by sufficient sureties."

The imposition of the least onerous condition that will assure the defendant's appearance is the statutory response to the prohibition of excessive bail. The reliance upon criminal sanctions instead of financial loss to assure defendant's appearance corresponds to the constitutional requirement of release by sufficient sureties.

Section 5. General conditions of release agreement. (1) If a defendant is released before conviction the conditions of the release agreement shall be that he will:

(a) Appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court;

(b) Submit himself to the orders and process of the court; and

(c) Not depart this state without leave; and

(d) Such other reasonable conditions as the court may impose.

(2) If the defendant is released after conviction the conditions of the release agreement shall be that he will:

(a) Duly prosecute his appeal as required by ORS 138.005 to 138.500;

(b) Appear at such time and place as the court may direct;

(c) Not depart this state without leave of the court;

(d) Such other reasonable conditions as the court may impose; and

(e) If the judgment is affirmed or the cause reversed and remanded for a new trial, forthwith surrender to the officer from whose custody he was released.

COMMENTARY

A. Summary

Section 5 sets forth the general conditions of all releases of defendants before trial and during appeal. These conditions are implicit in the release of any defendant pending trial but for clarity purposes are stated in statutory form.

B. Derivation

Section 5 is derived from the Illinois bail provisions, 38 Ill Ann Stat s. 110-10.

C. Relationship to Existing Law

Current Oregon law does not explicitly state any general conditions for the release of a defendant. However, the forms of undertaking of bail contain a promise by those who undertake to bring the defendant to the appropriate court for prosecution at the appointed time (ORS 140.100).

The proposed draft explicitly states the general contents of the release agreement that the defendant shall agree to before he is released from custody. The codifying of the general conditions accomplishes two purposes. First, it standardizes all release agreements along explicit conditions so every releasing magistrate will have knowledge of the general conditions. Second, the general conditions will place the defendant on notice of the existence of his responsibilities when he is released from the custody of the law.

Section 6. Personal recognizance. (1) When the defendant is released on his personal recognizance he shall file with the clerk of the court in which the magistrate is presiding a release agreement duly executed by the defendant and containing the conditions ordered by the releasing magistrate.

Existing Law
ORS 140.710 to 140.750

(2) A failure to appear as required by the release agreement shall be punishable as provided in ORS 162.195 or 162.205.

COMMENTARY

A. Summary

Section 6 requires the defendant who is released on his person recognizance to sign a release agreement and file it with the clerk of the court. A failure to appear in court when directed constitutes the crime of bail jumping as defined in ORS 162.195 and 162.205.

B. Derivation

Subsection (1) is derived from ORS 140.730 and 38 Ill Ann Stat s. 110-2.

C. Relationship to Existing Law

Section 6 does not change current law, ORS 140.730, because the current law requires the defendant to file a written agreement with the clerk of the court agreeing to the general conditions of release. However, the proposed section makes it clear that breach of the agreement by a failure to appear will constitute the crime of "bail jumping."

Many bail projects have released defendants on their personal recognizance and have good appearance rates. Denver released 1492 defendants with 28 not appearing. The District of Columbia released 1213 defendants with 35 not appearing. New York released 6732 defendants with only 79 not appearing. Therefore, one of the premises of the Illinois Bail revision is substantiated:

> "This approach involves three fundamental premises: (1) Factual studies prove that the great majority of persons released on bail have no intention of violating bail and will appear for trial.* * *" Commentary, 38 Ill Ann Stat Art 110.

Section 7. Conditional release. Conditional release may include one or more of the following conditions:

Existing Law
ORS 140.100

(1) Release of the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting him in appearing in court. The supervisor shall not be required to be financially responsible for the defendant, nor to forfeit money in the event he fails to appear in court.

(2) Reasonable regulations on the activities, movements, associations and residences of the defendant.

(3) Release of the defendant from custody during working hours.

(4) Any other reasonable restriction designed to assure the defendant's appearance.

COMMENTARY

A. Summary

Section 7 creates conditions for the release of a defendant when personal recognizance is unwarranted. The conditions are in addition to the general conditions imposed pursuant to section 5.

The conditions include release to a qualified person or organization for supervision, regulations on the defendant's associations and residences, work release and any other reasonable restrictions designed to assure the defendant's appearance.

B. Derivation

Section 7 is derived from Pretrial Release s. 5.2 (b).

C. Relationship to Existing Law

Section 7 is new to Oregon law as there is no current provision authorizing release upon certain conditions of the defendant's activities and associations. However, the concept of supervisors is not new to Oregon law. ORS 140.100 through 140.200 provide for an undertaking of bail. The current law allows another two persons to promise to produce the defendant at the appropriate time. However, the person who undertakes must promise to pay a certain amount of money if the defendant fails to appear when required by the court.

The new provision would continue the concept of private persons undertaking to supervise the defendant but would not require the supervisors to pay any money to the court when the defendant fails to appear. However, if the supervisor(s) knowingly aid in the flight of the defendant they can be punished under the contempt power of the court as authorized by section 13.

The commentary to Pretrial Release stated:

> "The proposal grows out of the discovery by bail projects that frequently a friend, relative, employer, or perhaps clergyman would agree to help the defendant appear in court when required. Where closer and more authoritative supervision is necessary, the defendant may be required to report to a probation officer who is empowered to impose reasonable restrictions on him." At 57.

The Bail Reform Act of 1966 provides for reasonable restrictions that include: "...a condition requiring that the person return to custody after specified hours." 18 USC s. 3146 (a) (5). Subsection (3) sets forth the authority of the magistrate to impose this condition if he deems it necessary.

A recent federal court decision interpreted the reasonableness of the residence restriction upon a defendant and found that conditioning the release of a 19 year old mail fraud defendant on "moving into town and living with mom" violated terms of the 1966 Bail Reform Act. Prior to indictment, he had led an exemplary life and had given no indications that he would be a poor bail risk. United States v. Cramer, 10 Cr L 2197 (Ct App 5th Cir 11/23/71).

Section 8. Security release. (1) The magistrate shall set a security amount that will reasonably assure the defendant's appearance. The defendant shall execute the security release in accordance with this Article in the amount set by the magistrate.

Existing Law
ORS 140.050 140.110 to 140.340

(2) The defendant shall execute a release agreement and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10 percent of the security amount, but in no event shall such deposit be less than $25. Upon depositing this sum the defendant shall be released from custody subject to the conditions of the release agreement. Once security has been given and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction the latter court shall continue the original security in that court subject to section 11 of this Article. When conditions of the release agreement have been performed and the defendant has been discharged from all obligations in the cause, the clerk of the court shall return to the accused, unless the court orders otherwise, 90 percent of the sum which has been deposited and shall retain as security release costs 10 percent of the amount deposited. However, in no event shall the amount retained by the clerk be less than $5 nor more than $100. At the request of the defendant the court may order whatever amount is repayable to defendant from such security amount to be paid to defendant's attorney of record.

(3) Instead of the security deposit provided for in subsection (2)

the defendant may deposit with the clerk of the court an amount equal to the security amount in cash, stocks, bonds or real property situated in this state with unencumbered equity not exempt owned by the accused or sureties worth double the amount of security set by the magistrate.

COMMENTARY

A. Summary

Section 8 sets forth the authority of the magistrate to set a certain amount of money as security for the appearance of the defendant. The defendant can deposit 10 percent of the security amount with the clerk of the court, deposit the full cash amount, or deposit stocks, bonds or real property as security for his appearance.

The defendant will receive a refund of 90 percent of the amount deposited under the 10 percent deposit plan if he appears and performs his responsibilities. The remaining amount of money will be retained by the clerk for administrative expenses.

B. Derivation

Section 8 is derived from 38 Ill Ann Stat ss.110-7 and 110-8.

C. Relationship to Existing Law

This section is new and provides for the 10 percent deposit as security for appearance. Current law, ORS 140.310 through 140.340, allows for a deposit of money instead of an undertaking of bail. However, this deposit of money must be in the full amount of the security amount. The current practice in Oregon allows for a commercial surety, or bondsman, to provide the full security amount for the release of the defendant. The premiums vary according to the amount of the bond but are generally around 10 percent of the face amount. However, the premium amount is not refunded when the defendant appears as directed by the court.

In 1962 there were 51,161 commercial surety bail bonds written in the Municipal Court of Chicago and 5487 forfeited for a forfeiture rate of 10 percent. After the institution

of the 10 percent deposit system, the number of ten percent deposit bonds in Chicago for 1968 was 81,989 with 8,856 forfeitures for a rate of 10.7 percent. In 1969 there were 94,202 deposit bonds with 10,402 forfeitures for a default rate of 11.7 percent. (Statistics summarized from Murphy, Revision of State Bail Laws, 32 Ohio State Law J 451 (1971)).

The Illinois system proved as effective as the previous commercial bond system where there was no refund of the deposit or premium. The ABA Pretrial Release Standards s. 5.3 recommends the adoption of the 10 percent system.

A portion of subsection (2) which provides for the continuance of the security amount from one court to another changes the current Oregon law. ORS 140.050 (2) does not provide for the continuance of "bail" after the indictment of the defendant. When a defendant is released by the district court and later indicted the bail must be set by the circuit court. In some instances where a preliminary hearing was held but the district attorney chose to seek an indictment and not appear at the preliminary hearing, the original bail is dismissed by the district court only to be reset by the circuit court pursuant to the indictment. The result is that an indicted defendant must pay two 10 percent premiums to keep his freedom, neither of which is refundable. The proposed change would provide for the continuance of the security amount from one court to another.

The proposed draft changes slightly one of the provisions of the Illinois statute. The proposal places an upper limit on the dollar amount that can be retained by the clerk for administrative purposes. Although no information is available as to the cost of administering the deposit system, $100 would appear to be sufficient to handle the papers involved in the processing of the deposit bond. Illinois has no upper limit, only the lower limit of $5.

The proposal follows Illinois' proposal in giving the option of the form of security to the defendant. Illinois defendants, during 1968, generally favored the cash bail system with 60 percent depositing the full cash amount, 35 percent making the 10 percent deposit, and five percent released on personal recognizance. (See Murphy article, 32 Ohio State Law J at 479).

Subsection (3) allows the defendant to deposit cash, stocks, bonds or real property in lieu of the 10 percent deposit system. The method of depositing the security is created in section 9.

Section 9. Security schedules and discharge. (1) If the security is stocks and bonds the defendant or his sureties shall file with the security deposit a sworn schedule which shall be approved by the court and shall contain:

Existing Law
ORS 140.110
140.120
140.130
140.140
140.340
140.430

(a) A list of stocks and bonds deposited describing each in sufficient detail that it may be identified;

(b) The market value of the stocks and bonds listed;

(c) The total market value of the stocks and bonds listed;

(d) A statement that the affiant is the sole owner of the stocks and bonds listed and they are not exempt from execution;

(e) A statement that the stocks and bonds have not previously been used or accepted as release security in this state during the 12 months preceding the date of the release agreement; and

(f) A statement that the stocks and bonds are security for the appearance of the defendant in accordance with the conditions of the release agreement.

(2) If the security is real property the defendant or his sureties shall file with the release agreement a sworn schedule which shall contain:

(a) A legal description of the real property;

(b) A description of any encumbrances on the real property including the amount of each and the holder thereof;

(c) The market value of the unencumbered equity owned by the affiant;

(d) A statement that the affiant is the sole owner of the unencumbered equity and that it is not exempt from execution;

(e) A statement that the real property has not previously been used or accepted as security in this state during the 12 months preceding the date of the release agreement; and

(f) A statement that the real property is security for the appearance of the accused in accordance with the conditions of the release agreement.

(3) The sworn schedule shall constitute a material part of the release agreement. The affiant commits the crime of perjury if in the sworn schedule he knowingly makes a false statement which he does not believe to be true.

(4) A certified copy of the release agreement and schedule of real property shall be filed immediately in the office of the county clerk in which the real property is situated and the state shall have a lien on the real property from the time the copies are filed in the office of the county clerk until a court order discharges the lien. The county clerk shall enter, index and record the release agreement and security without requiring any advance fee, which fee shall be taxed as costs in the proceeding and paid out of the costs when collected.

(5) When the conditions of the release agreement have been performed and the accused has been discharged from his obligations in the cause, the court shall order the clerk of the court to return to the defendant or his sureties the deposit of any cash, stocks or bonds and the discharge of the state's lien on any real property. If security was real property the clerk of the court shall furnish a copy of the court order discharging the state's lien to the county clerk.

(6) No stocks, bonds or real property may be used or accepted as security in this state more than once in any 12 month period.

COMMENTARY

A. Summary

Section 9 sets forth the procedure whereby the defendant can deposit cash, stocks, bonds or real property with the clerk of the court in lieu of the 10 percent deposit established in section 8.

B. Derivation

Section 9 is derived from 38 Ill Ann Stat s. 110-8.

C. Relationship to Existing Law

Current law, ORS 140.110 through 140.140, provides for an execution of undertaking by the sureties, a qualification of bail, a justification of bail and an examination of the sufficiency of bail. Section 9 does not change the underlying philosophy of these ORS sections, that of ascertaining the value of the bail and determining the species and extent of ownership of the security.

However, section 9 simplifies the language and procedure for determining the species of the security and the extent of ownership. The new procedure lists specific criterion that must be included in a sworn schedule of security. The current procedure in ORS 140.140 requires a showing of sufficiency of bail "...in such manner as the court or magistrate deems proper." The current law does not specifically require the identity of the species of security nor a description of the real property that is used as an undertaking of bail.

Current law, ORS 140.100, requires two persons to qualify as bail for the defendant. The proposed section 9 only requires that a person own the species of security. In the case of real property, the value of the "unencumbered equity" must be more than the amount of security set by the magistrate.

The proposed section 9 prohibits the use of the security for release more than once every 12 months. Also, the clerk of the court must notify the county clerk, the same person in many Oregon counties (ORS 205.110), of the state's lien on any real property used as security for release of the defendant. Both of these provisions are not included in the current provisions of ORS chapter 140.

Current law does not provide any clear discharge of security procedure. ORS 140.410 (2) uses complex language to effect the exoneration of bail when the defendant is surrendered. Subsection (5) provides the procedure to be followed by the clerk when the conditions of the release agreement have been performed.

Section 10. Taking of security by peace officer. When a security amount has been set by a magistrate for a defendant's release, any peace officer may take the security in accordance with the provisions of this Article and release the defendant to appear in accordance with the conditions of the release agreement. The peace officer shall give a receipt to the defendant for the security so taken and within a reasonable time deposit the security with the clerk of the court having jurisdiction of the offense.

COMMENTARY

A. Summary

Section 10 allows a peace officer to take the deposit of security or the cash, stocks, bonds or security schedule of real property and release the defendant. The security must be turned over to the clerk of the court having jurisdiction over the offense.

B. Derivation

Section 10 is derived from 38 Ill Ann Stat s. 110-9.

C. Relationship to Existing Law

The current provisions of ORS chapter 140 only allow the deposit of the bail security with the clerk of the court. However, practice in some counties, like Marion County, allows the sheriff to take the bail money and subsequently turn it over to the court clerk.

The original Illinois statute allows for the magistrate to set a "bail schedule" from which the peace officer can determine the amount of bail for the particular offense. Section 10 does not include this provision because it only allows the peace officer to take the security after the magistrate has set the security amount for the particular defendant. This procedure insures the individualization of the release decision and fosters the use of personal recognizance release in preference to security release.

The use of a bail schedule would allow a person to post a security amount when in many cases, release criteria would show that the defendant could be released on his personal recognizance. However, the magistrate should be the one authorized to release a defendant on his personal recognizance instead of the peace officer. The result is that a person may have to be incarcerated for one day in order to be released on his personal recognizance instead of being released immediately under a bail schedule.

The institution of a bail schedule runs the risk of excluding persons from release who cannot pay the scheduled amount. Here, the interest in speedy release competes against the constitutional interest of the defendants to have a hearing on the release decision and to have equal treatment in the application of the state bail laws. Recently, a federal court in Florida held that the bail schedule in Dade County violated the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. The court, in Ackies v. Purdy, 322 F Supp 38 (S.D. Fla 1970), found that defendants who cannot afford the scheduled amount remain in jail from three days to three weeks before a judicial appearance. During a two year period:

> "...a minimum of 680 persons were incarcerated in the Dade County Jail because of their inability to post the master bail bond for approximately 30 days between the time of arrest and their first appearance before a judicial officer." 322 F Supp at 40.

The court in Ackies went on to state that the complete loss of liberty for days or weeks for the group of defendants who could not afford the scheduled bail was a "fundamental interest" of the defendant's which could be restricted by the operation of the state bail schedule only if a compelling state interest supported the restriction. The court found no such interest and stated:

> "A poor man with strong ties in the community may be more likely to appear than a man with some cash and no community involvement." 322 F Supp at 42. (See also, Murphy, Revision of State Bail Laws, 32 Ohio State Law J 451, 481 (1971).

The other basic problem of the bail schedule is that the scheduled amount is solely based upon the charge and there is no inquiry into the background of the defendant along the lines of the release criteria. The result is no individualization of the release decision.

Section 11. Forfeiture and apprehension. (1) Upon failure to comply with any condition of a release agreement or personal recognizance, the court having jurisdiction may, in addition to any other action provided by law, issue a warrant for the arrest of the person at liberty upon a personal recognizance, conditional or security release.

Existing Law
ORS 140.410 to 140.670

(2) If the defendant does not comply with the conditions of the release agreement, the court having jurisdiction shall enter an order declaring the security to be forfeited. Notice of the order of forfeiture shall be mailed forthwith to the defendant and, if applicable, his sureties at their last known address. If the defendant does not appear and surrender to the court having jurisdiction within 30 days from the date of the forfeiture or within such period satisfy the court that appearance and surrender by the accused is impossible and without his fault, the court shall enter judgment for the state against the defendant and, if applicable, his sureties, for the amount of security and costs of the proceedings.

(3) When judgment is entered in favor of the state on any security given for a crime, or judgment for a political subdivision of the state on any security release given for a crime, the district attorney shall have execution issued on the judgment forthwith and deliver same to the sheriff to be executed by levy on the deposit made in accordance with section 8, cash, stocks or bonds deposited with the clerk of the court and the real property described in the security release schedule. The cash shall be used to satisfy the judgment and costs and paid into the treasury of the municipal corporation wherein the security release

was taken if the offense was a crime defined by an ordinance of a political subdivision of this state, or into the treasury of the county wherein the security was taken if the offense was a crime defined by a statute of this state.

(4) The stocks, bonds and real property shall be sold in the same manner as in execution sales in civil actions and the proceeds of such sale shall be used to satisfy all court costs, prior encumbrances, if any, and from the balance a sufficient amount to satisfy the judgment shall be paid into the treasury of the municipal corporation wherein the security was taken if the offense was a crime defined by an ordinance of a political subdivision of this state, or into the treasury of the county wherein the security was taken if the offense was a crime defined by a statute of this state. The balance shall be returned to the owner. The real property sold may be redeemed in the same manner as real estate may be redeemed after judicial or execution sales in civil actions.

COMMENTARY

A. Summary

Section 11 provides for the procedure on the forfeiture of the security amount and the apprehension of the defendant who fails to comply with conditions of the release agreement.

B. Derivation

Subsection (1) is derived from 38 Ill Ann Stat s. 110-3. Subsection (2) is derived from 38 Ill Ann Stat s. 110-7 (g) and 110-8 (g). Subsections (3) and (4) are derived from 38 Ill Ann Stat s. 110-8 (h).

C. Relationship to Existing Law

The current provisions of ORS 140.510 through 140.530 provide for the arrest of a defendant who does not comply

with the provisions of his release. The proposed subsection (1) provides for the same result as current law but simplifies the language. The provision in ORS 140.510 (3) is not incorporated into the current proposal. This subsection provides for arrest at any time after an indictment is issued after a defendant has been released. There appears to be no purpose in arresting a person who has already been released merely because of an indictment.

Subsection (2) follows the current law stated in ORS 140.620 in allowing 30 days of grace for a forfeiting defendant. However, the proposed subsection delineates the guidelines for grace as being "...appearance and surrender by the accused is impossible and without his fault...." ORS 140.620 states that the defendant must satisfactorily excuse his failure to appear. The proposed section provides for notice to the defendant and if applicable, his sureties in the case of forfeiture. Present law does not provide for any statutory notice.

The present law allows for a discharge of the deposit upon such terms as are just (ORS 140.620). The proposed section states that once the forfeiture is inexcusable, then the total security amount plus the costs of the proceedings must be entered as a judgment against the defendant and if applicable, his sureties.

Subsections (3) and (4) provide specific procedure for the enforcement of the security release agreement that has been forfeited by the defendant. Current law, ORS 140.630, states that the district attorney may proceed by action only against the bail upon their undertaking. In cases of money deposited as security, the current law provides that such bail be deposited by the county treasurer. The proposed procedure pvovides that the money shall be deposited with the county treasurer when the crime was a state crime and deposited with the city if the crime was defined by a city ordinance.

Current law makes no specific provision for the disposition and method of forfeiture enforcement for stocks, bonds and real property. The proposed subsection (4) incorporates the civil method of execution sales and a disposition similar to the disposition of money security that has been forfeited.

The dispositions of fines for various violations are provided for in different ORS sections and are to be distinguished from the forfeiture of release security. The forfeiture of release security does not exonerate the state's

cause of action against the defendant. The state can still arrest a defendant who has forfeited the security and bring him to arraignment. The following statutes are mentioned for informational purposes only because they deal with the disposition of fines:

ORS 484.250. Disposition of traffic fine money.
ORS 51.310. Payment of fines to the county treasurer by the justice of the peace.
ORS 496.715. Disposition of fines for fish and game violations.
ORS 496.990. Fish and game offenses considered misdemeanors.

Subsections (3) and (4) limit the disposition of forfeited security to "crimes." This limitation excludes the violations which carry only fines and no possibility of imprisonment. Most forfeitures of security in the traffic offenses will fall within the violation definition and outside of the disposition provisions of this section. Therefore, the current procedure of the disposition of "bail" forfeited in lieu of trial in small matters will not be affected in so far as the offenses are only violations.

Section 12. Release decision review. (1) The releasing magistrate shall review the release decision after two days if the defendant has failed to secure his release.

Existing Law
ORS 140.030
140.070
140.080
140.090

(2) The defendant may appeal from the release decision to the court or judge in which the defendant is triable for the crime charged, seeking a modification in the conditions and security of the release.

(3) After conviction, the court may order that the original release agreement, and if applicable, the security, stand pending appeal or deny, increase or reduce the release agreement and the security.

(4) The decision of the court or judge thereof, granting or denying release, either upon an original application or upon an appeal, is final.

COMMENTARY

A. Summary

Section 12 provides for an automatic review of the release decision when a defendant fails to secure his release. The defendant may also seek a modification of the release decision or security amount.

Section 12 also provides for release pending appeal. Any party may appeal the granting of release pending the appeal from conviction seeking a decrease or increase in conditions or security.

B. Derivation

Subsection (1) is derived from Pretrial Release s. 5.9 (a). Subsection (2) is derived from ORS 140.070. Subsection (3) is derived from 38 Ill Ann Stat s. 110-7 (d) and (e). Subsection (4) is derived from ORS 140.080.

C. Relationship to Existing Law

Current law does not provide for an automatic review of the release decision when a person is unable to secure release. The ABA in Pretrial Release suggests that automatic review is desirable and that this approach follows closely the provision of the Bail Reform Act of 1966, 18 USC s. 3146 (d).

Subsection (2) follows current law stated in ORS 140.070.

Subsection (3) provides for continued release on appeal by a convicted defendant. Current law, ORS 140.080, provides for the finality of the decision made pursuant to ORS 140.070. The proposed subsection (4) follows the current law and makes the decision of the trial court magistrate final.

Section 13. Penalties. (1) Any supervisor, pursuant to section 7 of this Article, who knowingly aids the defendant in breach of the conditional release is punishable by contempt.

Existing Law
ORS 140.990

(2) Any defendant who knowingly breaches any of the regulations in his release agreement imposed pursuant to subsection (3) of section 7 of this Article is punishable by contempt.

COMMENTARY

A. Summary

Section 13 provides penalties for a defendant who breaches the conditions of his release agreement and any supervisor who knowingly aids the defendant in any breach of the release agreement.

B. Derivation

Section 13 is partially derived from ORS 140.990.

C. Relationship to Existing Law

The current law punishes a person by contempt if he applies for release after it has been denied. This provision is not continued in the new proposal.

The proposed penalties of contempt are to prevent an agreement by a supervisor who intends to aid in the escape of the defendant and merely enters the release agreement to effect the escape of the defendant. The current provisions of ORS 140.100 require those who undertake to pay money if the accused does not appear. Since the money basis is eliminated, there must (or should) be some penalty to prevent the situation of the conspiring supervisor.

The defendant can be arrested under a warrant if he breaches the conditions of his release agreement. However, the arrest is only to reconsider the conditions of the release agreement and, if the breach is substantial, to arrest the defendant for the crime of bail jumping. However, if the defendant's appearance date has not occurred and he breaches a regulation of residence laid down in the release

agreement, then contempt could be the appropriate penalty because the defendant has not committed the offense of "bail jumping."

Therefore, the contempt proceeding, under ORS 33.010 (1) (i) would be available to insure that the defendant followed the conditions of the release agreement.

SUPPLEMENTARY COMMENTARY

OREGON BAIL CASES

State v. Hayes, 2 Or 315 (1868) - ORS 140.010, 100, 110, 130, 160.

The undertaking in Oregon is a simple contract, a conditional promise to pay money, to be sued upon as is a bond or promissory note.

The contract for undertaking is complete when a party comes before the magistrate and subscribes to such a promise and makes the formal affidavit of justification as bail.

Clifford v. Marston, 14 Or 426, 13 P 62 (1887) - ORS 140.610.

The journal entry was sufficient to show default when it stated that the State of Oregon was represented by the district attorney, and defendant's name was called three times at the courthouse door with no answer.

State v. Crane, 15 Or 148, 13 P 773 (1887) - ORS 140.010.

Appearance by counsel in place of defendant to contest contempt proceedings was sufficient showing to satisfy undertaking to appear. No default in undertaking.

The difference between an undertaking and a recognizance is that a recognizor acknowledges himself indebted in a sum of money to be paid if he fails to do some act, while the party obliged undertakes that he will either appear and abide the order of the court, or he will pay the amount in which he is admitted to bail.

Colvig v. Klamath Co., 16 Or 244, 19 P 86 (1888) - ORS 140.010

A recognizance is an obligation of record entered into before the court, with a condition to do some act required by law which is therein specified. When forfeited it is made absolute and it has the force and effect of a judgment.

An undertaking of bail in criminal cases under the Code is in definition and purpose a recognizance. It is an undertaking entered before a competent court or magistrate by the persons who engage as sureties for a defendant, that he will appear according to the conditions of the undertaking.

Metchan v. Grant Co., 36 Or 117, 58 P 80 (1899) - ORS 140.670.

When property of surety was sold to satisfy a judgment rendered on an undertaking of bail, the money becomes part of the county assets. However, when the judgment is reversed, the county is liable for the restitution of the money so collected.

The duty to restore the money is an obligation imposed by law which may be enforced by an action against the county.

Malheur Co. v. Carter, 52 Or 616, 98 P 489 (1908) - ORS 140.010, 040.

The right to take bail from one accused of crime depends upon a valid order having been previously entered by a committing magistrate in the form of ORS 133.820 and this section.

The action for an undertaking may be brought in the name of the county. The practice has been to sue in the name of the state or the district attorney.

The bond is not forfeited because there was no showing that the accused was called for arraignment and no showing what the accused was indicted for.

The undertaking must be given to answer the crime found by the magistrate to have been committed and of which he believes the accused guilty.

It is essential to the validity of a recognizance or undertaking for bail that it specify upon its face the charge which the accused is held to answer.

A statutory undertaking to be enforceable must have been taken in substantial compliance with the terms of the statute authorizing it, and if not so taken, cannot be enforced as a common-law undertaking.

Cameron v. Burger, 60 Or 458, 120 P 10 (1912) - ORS 140.640

The statute itself provides the manner in which a defendant may be surrendered and bail exonerated - it excludes all other methods of reaching that result.

A purported release by the district attorney is without effect.

Clatsop Co. v. Wuopio, 95 Or 30, 186 P 547 (1920) - ORS 140.110

The admitting to bail is a judicial act in which clerks have no power - relating to the order determining that the offense is bailable and fixing the amount of undertaking.

Taking bail, or the final acceptance by the court, in an undertaking was valid although justification of sureties was before the clerk.

Rosentreter v. Clackamas Co., 127 Or 531, 273 P 326 (1928) - ORS 140.310, 320, 330, 410.

Officers authorized to take money in lieu of bail must follow the statute. A defendant who has deposited money in lieu of bail and desires to substitute bail must follow the statute.

Since the statute provides the manner in which a defendant may be surrendered and bail exonerated, that is the rule to be observed.

Delaney v. Shobe, 218 Or 626, 346 P2d 126 (1959) - ORS 140.030

Factors to be considered in fixing bail are:

Ability of accused to give bail;
Nature of offense;
Penalty for offense charged;
Character and reputation of accused;
Health of accused;
Character and strength of evidence;
Probability of accused appearing at trial;
Forfeiture of other bonds;
Whether accused was under bond in other cases;
Whether accused was a fugitive from justice when arrested.

The mere fact of inability to give bail in amount set is not sufficient reason for holding amount excessive. No evidence was advanced to show bail was excessive.

Thomas v. Gladden, 239 Or 293, 397 P2d 836 (1964) - ORS 140.020

ORS 140.030 makes bail a matter of right. To construe prisoner's silence in a case of this kind as a neutral factor, and to hold that he has not waived the right to bail merely by electing to make his time in custody count towards the sentence, is consistent with ORS 140.030.

A prisoner should have the right to choose for bail or good time and have the court designate the amount of bail if the prisoner makes a timely request.

State v. Keller, 240 Or 442, 402 P2d 521 (1965) - ORS 140.040.

Setting of bail is in the sound discretion of the trial judge and will be disturbed only for an abuse of discretion.

Hanson v. Gladden, 246 Or 494, 426 P2d 465 (1967)

Neither the Eighth nor Fourteenth Amendment of the U. S. Constitution requires that everyone charged with state offense must be given his liberty on bail pending appeal.

State ex rel Connall v. Roth, 258 Or 428, 482 P2d 740 (1971), 92 Adv Sh 419.

The indictment alone is not the proof contemplated by Oregon Const Art I, s. 14 to establish evident or strong proof or presumption of guilt.

Bail should be denied when circumstances disclosed indicate a fair likelihood that defendant is in danger of being convicted of murder or treason.

In evaluating the proof needed, the trial court has broad discretion. However, the indictment alone is not sufficient to make the proof strong so as to deny bail.

That state must show more than the indictment for "strong proof."

Other competent evidence to prove the commission of murder must be offered by the state before the accused may be denied admission to bail.

Sullivan v. Cupp, 1 Or App 388, 462 P2d 455 (1969) - ORS 140.020.

Court finds no merit in the contention that an indigent defendant is discriminated against when money bail is set because his freedom is denied due to his indigency whereas a rich man could post bail. The court affirms the rule in Rigney v. Hendrick, 355 F2d 710 (3d Cir 1965):

> "...admittedly, there is a classification between those who can and those who cannot make bail. The Constitution permits such a classification...." 355 F2d at 715.

* * * *

RECENT FEDERAL DECISIONS IN RE BAIL

U. S. v. Leathers, 412 F2d 169 (9th Cir 1969).

If the bail agency, because of a lack of funds and staff, is unable to engage in a creative search for nonfinancial conditions, serious questions would arise concerning compliance with the Bail Agency Act and equal treatment of the rich and poor unless the trial judge seeks to fill the void left by the failure of the Bail Agency to perform its statutory function.

U. S. v. Melville, USDC, SNY, 11/15/69, 6 Cr L 2153

The Bail Reform Act creates a strong policy in favor of personal recognizance and it is only if "such a release would not reasonably assure the appearance of the person as required" that other conditions of release may be imposed.

Kinney v. Lenon, 447 F2d 596 (9th Cir 1971).

Appellant sought to have ORS 419.583 declared unconstitutional because the statute stated that bail in criminal cases should not be applicable to children. Court did not reach this issue because they held that equitable relief under 42 USC 1983 is foreclosed by the same policy reasons of comity inherent in our government's federalism outlined in Younger v. Harris.

At an earlier proceeding (7 Cr L 2154) the court had ordered the defendant released so that he may aid counsel in securing witnesses to the school yard fight. "White lawyers" would have great difficulty in interviewing and lining up witnesses and appellant is the sole person who can do so.

U. S. v. Kirkman, CA 4 Cir, 5/26/70 - 7 Cr L 2238.

Defendant, a lifelong resident of the community, is entitled to recognizance release and friends who acted as surety for appearance are not liable for his bad faith failure to show. Defendant may discharge his obligation by paying $2500 rather than the full $25,000. Defendant never attempted to escape - he merely faked an accident - and there was no difficulty in finding him and he was later tried and convicted.

Schilb v. Kuebel, No. 70-90, argued 10/12/71 U. S. Sup Ct - 10 Cr L 4028.

Oral argument concerning the 10 percent deposit system of Illinois. Equal protection is asserted to show that the poor must of necessity take the 10 percent deposit bail because they cannot afford the full cash bond. The result is that the poor must pay the administration fee of 10 percent of the premium (one percent face value) while the non-poor can pay cash bail and receive the entire amount back upon appearance. Thus, the imposition of the "fee" generally falls on just one class of defendants - the poor.

U. S. v. Cramer, 451 F2d 1198 (5th Cir 1971).

Conditioning release of a 19 year old mail fraud defendant on "moving into town and living with mom"violated terms of the 1966 Bail Reform Act. Prior to indictment, he had led an exemplary life and had given no indications that he would be a poor bail risk.

U. S. v. Armsbury, USDC-Ore, 2/24/71 - 8 Cr L 2478

There is reasonable inference that the defendant's release at this time would pose a danger to the community. Defendant was either rationally committed to terrorism or was mentally so unstable and irresponsible that his release would pose a danger to the community. (Opinion by Justice Goodwin).

Harris v. U. S., CA 9th Cir, 8/31/71 - 9 Cr L 2498.

Bail on appeal should be granted. Where an appeal is not frivolous or taken for delay, bail is to be denied only in cases in which, from substantial evidence, it seems clear that the right to bail may be abused or the community may be threatened by the applicant's release.

Here, applicant was making $150 per week, lived in Los Angeles for the past eight years, had several relatives living in Los Angeles and had never failed to make a court appearance.

* * * *

OREGON STATUTES AFFECTED BY RELEASE OF DEFENDANTS

The following statutes incorporate by direct reference the existing bail provisions of ORS chapter 140:

ORS 22.020	Provides for deposit of money, checks or federal or municipal obligations in lieu of bonds.
ORS 33.080	Bail for contempt, how given.
ORS 133.650	Preliminary examination and admission to bail.
ORS 135.190	Requirement to take defendant before magistrate when arrested for purposes of putting in bail.
ORS 135.200	Order on taking of bail; discharge of defendant; return of warrant and order.
ORS 135.210	Denial of bail; disposition of the defendant.
ORS 136.295	60 day limit on custody for defendant pending trial; inapplicable to non-bailable offenses.
ORS 138.145	Temporary retention at place of original custody of defendant under sentence of imprisonment.
ORS 138.160	Appeal by state as stay of judgment or order; bail.
ORS 138.250	New trial to be in court below; reversal without new trial.
ORS 139.150	Undertaking of material witness at time of making complaint or at arraignment.
ORS chapter 145	Prevention of Crime and Security to Keep Peace

ORS 147.160	Bail for defendants being extradicted.
ORS 156.410-156.530	Bail in justice court.
ORS 157.050	Bail on appeal from justice court.
ORS 162.195	Bail jumping.
ORS 162.205	Bail jumping.
ORS 426.570	Detention of sexually dangerous; bail for.
ORS 481.350	Surety in form of undertaking for wrecker's license.

SUMMARY OF PRETRIAL RELEASE PROJECTS THROUGHOUT THE COUNTRY

	Project Starting Date	Sponsor	Staff	Charges	Time until Interview	Pre or Post Arraignment	Information Verified?	Release Criteria	Types of Recommendations	Final Authority	Notification	Statistical Period	Number Interviewed	Number Recommended	% Rec. of Interviewed	Number R.O.R.	% R.O.R. of Recommended	Detainees Segregated	Jail Overcrowded	Number of Jumpers
Berkeley, Calif.	7/16/64	Court	Jailer	Fel. and Misd.	Within 24 Hours	Pre	Yes	Subj.	Report without Rec.	Judge	Court	7/16/64 - 8/31/65	1,034			228		Yes	No	8
Los Angeles, Calif.	3/23/64	Court	Court Investigator	Fel.	Within 48 Hours	Post	Yes	Subj.	Pos., Specific Bail	Judge	Project	3/23/64 - 8/31/65	1,690	app. 456	27%	456	100%	Yes	No	10
Oakland, Calif.	9/21/64	Ford Foundation	Probation Officers	Misd.	1-5 Days	Pre, Post	Yes	Subj.	Pos., Neg., Report without Rec.	Judge	Project	9/21/64 - 7/31/65	801	388	48%	252	65%	No	No	18
San Francisco, Calif.	8/26/64	Bar Assn.	Law Students	Fel. and Misd.	Within 12 Hours	Pre	Yes	Obj.	Pos.	Judge	Project	8/26/64 - 9/1/65	1,480	523	35%	487	93%	No	No	9
Sunnyvale, Calif.	11/6/63	Police	Police	Misd.	Within 3 Hours	Pre	Yes	Subj.	Pos. and Neg.	Shift Captain	Project	11/63 - 8/31/65	2,607	1,286		1,286		Yes	No	
Denver, Colo. (District Ct.)	11/1/64	Court	Probation Officers	Fel.	3-5 Days	Pre, Post	Yes	Obj.	Pos., Neg., Specific Bail	Judge	Court	11/1/64 - 8/31/65	819	144	18%	144	100%	No	Yes	3
Denver, Colo. (Municipal Ct.)	6/1/64	Sheriff's Office	Deputy Sheriff	Fel. and Misd.	Within 3 Hours	Pre	Yes	Subj.	Pos., Neg., Specific Bail	Judge	Project	6/1/64 - 8/23/65	app. 2,000	1,492	75%	1,492	100%	Yes	Yes	28
Connecticut (State-wide)	6/1/65	Court	Family Relation Officers	Fel.	Within 12 Hours	Pre	Yes	Obj.	Pos.	Judge	Project	6/1/65 - 9/15/65	363	123	34%	118	96%	No	Yes	4
New Haven, Conn.	6/7/65	Legal Assistance Assn.	Law and College Students	Fel. and Misd.	Within 3 Days	Pre	Yes	Obj.	Pos., Report without Rec., Specific Bail	Judge	Project	6/7/65 - 8/20/65	210	142	67%	141	99%	Yes	No	2
Wilmington, Del.	7/1/65	Citizens Crime Comm.	Law Students	Fel. and Misd.	Within 12 Hours	Pre	Yes	Obj.	Pos., Report without Rec.	House Sgt. or Judge	Project	7/1/65 - 8/31/65	203	11	5%	11	100%	No	No	0
District of Columbia	1/20/64	Ford Foundation	Law Students	Fel. and Misd.	Within 12 Hours	Pre	Yes	Obj.	Pos.	Judge	Project	1/20/64 - 8/27/65	app. 3,000	1,422	47%	1,213	85%	No	Yes	35
Atlanta, Ga. (Fulton Cty.)	10/15/64	Court	Attorneys	Fel. and Misd.	Within 48 Hours	Pre	Yes	Obj.	No Rec.	Attorney Interviewer	Court	10/15/64 - 8/17/65	1,200	233	19%	233	100%	Yes	No	18
Chicago, Ill.	3/63	Public Defender	Investigator	Fel. and Misd.	2-4 Days	Post	No	Subj.	Pos.	Interviewer	Project	1/1/65 - 8/31/65	1,403	706	50%	706	100%		No	19
Des Moines, Iowa	2/24/64	Private Foundation	Law Students	Fel. and Misd.	Within 48 Hours	Pre, Post	Yes	Obj.	Pos.	Judge, Interviewer	Project	2/4/64 - 8/4/65	1,536	1,172	76%	1,146	97%	No	No	15
Lexington, Ky.	2/1/65	Governor's Task Force	Law Students	Misd. and Lesser Fel.	Within 24 Hours	Pre, Post	Yes	Obj.	Pos., Report without Rec.	Judge	Project	2/1/65 - 5/1/65	app. 45	25	56%	20	80%	No	No	0
Louisville, Ky.	8/1/64	Court	Law Students	Fel. and Misd.	Within 12 Hours	Pre	Yes	Obj.	Pos.	Judge	Project	8/1/64 - 9/8/65	976	343	35%	149	43%	No	No	4
Prince George's Cty., Md.	6/64	State's Attorney	State's Attorney	Fel. and Misd.	2-3 Days	Usually Pre	Usually	Subj.	Pos., Neg., Specific Bail	State's Attorney	Project	6/64 - 7/65	40	30	75%	30	100%	No	No	0
Boston, Mass.	3/1/65	ABCD, Inc.	Law Students	Fel. and Misd.	Within 12 Hours	Pre	Yes	Obj.	Pos.	Judge	Project	3/1/65 - 6/1/65	app. 100	45	45%	15	33%	Yes	No	0
Kansas City, Mo.	10/1/64	Parole Board	Parole Officers	Fel.	10-20 Days	Post	Yes	Obj.	Pos., Report without Rec.	Judge	Project	10/15/64 - 9/13/65	334	126	37%	111	88%	No	No	2
St. Louis, Mo. (Circuit Ct.)	2/15/63	Probation	Probation Officers	Fel.	Within 24 Hours	Post	Yes	Subj.	Pos.	Judge	Project	2/15/63 - 8/31/65	1,621	421	26%	388	92%	No	Yes	3

(taken from: Bail and Summons: 1965, National Conference on Bail and Criminal Justice - August, 1966)

SUMMARY OF PRETRIAL RELEASE PROJECTS, continued

	Project Starting Date	Sponsor	Staff	Charges	Time until Interview	Pre or Post Arraignment	Information Verified?	Release Criteria	Types of Recommendations	Final Authority	Notifications	Statistical Period	Number Interviewed	Number Recommended	% Rec. of Interviewed	Number R.O.R.	% R.O.R. of Recommended	Detainees Segregated	Jail Overcrowded	Number of Jumpers
St. Louis, Mo. (County Ct.)	3/16/65	Probation	Probation Officers	Fel. and Misd.	Within 24 Hours	Pre	Yes	Subj.	Pos., Neg., Specific Bail	Judge	Project	3/16/65 - 8/15/65	68	29	43%	26	90%	No	No	1
Burlington, N.J.	12/1/64	Court	Probation Officers	Fel. and Misd.	Within 24 Hours	Pre	Yes	Obj.	Pos., Neg.	Judge	Project	12/1/64 - 8/31/65	79	39	49%	39	100%	Yes	Yes	3
Hackensack, N.J. (Bergen Cty.)	1/5/65	Probation	Probation Officers	Fel. and Misd.	Within 2-3 Weeks	Post	Yes	Obj.	Pos., Neg., Specific Bail	Judge	Project	1/5/65 - 8/31/65	102	19	19%	17	89%	Yes	No	1
Newark, N.J. (Essex Cty.)	6/64	County Court	Probation Officers	Fel. and Misd.	Defendent Applies	Post	Yes	Obj.	Pos., Neg., Specific Bail	Judge	Court	6/64 - 9/1/65	181			9		Yes	No	0
Albuquerque, N.M.	8/3/64	Law School	Law Students, Probat'n Officers	Misd.	Within 24 Hours	Post	Yes	Obj.	Pos.	Judge	Project	8/3/64 - 8/17/65	150	69	46%	69	100%	No	Yes	2
New York City N.Y.	3/20/64	Probation	Law Students, Probat'n Officers	Fel. and Misd.	Within 24 Hours	Pre	Yes	Obj.	Pos., Report without Rec.	Judge	Project	3/20/64 - 8/25/65	10,918	9,079	82%	6,732	74%	Yes	Yes	79
Nassau Cty., N.Y.	7/18/63	Probation	Probation Officer	Fel. and Misd.	Within 24 Hours	Post	Yes	Subj.	Pos., Neg., Reduced Bail	Judge	Court	7/18/63 - 8/31/65	1,028	411	40%	388	95%	Yes	Yes	4
Plattsburg, N.Y. (Clinton Cty.)	3/65	Probation and Univer.	Sociology Students	Fel. and Misd.	Within 24 Hours	Post	Yes	Obj.	Pos., Neg.	Judge	Project	3/65 - 8/65	25	20	80%	15	75%	No	No	0
Rochester, N.Y.	4/21/65	Bar Assn.	Students	Fel.	Within 24 Hours	Pre	Yes	Obj.	Pos., Neg.	Judge	Court	4/19/65 - 8/25/65	118	48	40%			Yes		
Syracuse, N.Y. (Onondaga Cty.)	1/1/65	Probation	Probation Officers	Fel. and Misd.	Within 12 Hours	Pre	Yes	Obj.	Pos.	Judge	Project	1/1/65 - 8/24/65	161	103	64%	100	97%	Yes	No	1
Cleveland, Ohio (Cuyahoga Cty.)	4/20/65	Court	Investigators	Fel.	Within 24 Hours	Pre	Yes	Obj.	Pos., Specific Bail	Judge	Project	4/20/65 8/31/65	380	174	46%	174	100%	No	No	0
Dayton, Ohio	8/2/65	Bar Assn.	Attorneys	Fel.	Within 3 Days	Pre	Yes	Obj.	Pos., Neg.	Judge	Court	8/2/65 - 8/31/65	38	22	55%	21	95%	No	Yes	0
Toledo, Ohio	8/26/64	Bar Assn.	Law Students	Fel.		Pre	Yes	Obj.	Pos.	Judge		8/26/64 - 7/26/65	265	105	40%	105	100%			
Willoughby, Ohio	3/65	Bar Assn.	Bailiff	Fel. and Misd.	3-5 Days	Post		Subj.	Pos.	Judge	Court	3/65 - 7/8/65	8	1	13%	1	100%			
Tulsa, Okla.	7/63	Bar Assn.	Attorneys	Misd.	Within 3 Hours	Pre	Disc. of Att.	Subj.	Pos.	Private Attorney	Project	7/63 - 5/11/65		4,087		4,087	100%			
Tulsa, Okla.	8/9/65	Bar Assn.	Vista Volunteers	Fel.	Within 24 Hours	Post	Yes	Obj.	Pos.	Judge	Project	8/9/65 - 9/15/65		36		36		Yes	Yes	0
Bucks Cty., Pa.	9/64	Private Foundation	Investigator	Fel. and Misd.	Within 48 Hours	Post	Yes	Obj.	Pos., Post Bail	Members of Foundation	Project	/65 - 9/65	15	4	27%	4	100%			0
Westmoreland Cty., Pa.	3/21/65	Court	Parole Officers	Fel. and Misd.	Within 3 Days	Post	Usually	Subj.	Pos., Neg., Report without Rec.	Judge	Project	3/21/65 - 9/10/65	118	11	9%	11	100%	Yes		0
Salt Lake City, Utah	6/28/65	Bar Assn.	Law Students	Fel. and Misd.	Within 12 Hours	Pre, Post	Yes	Obj.	Pos., Reduced Bail	Judge	Project	6/28/65 - 9/27/65	17	4	24%	4	100%	No	No	1
Charleston, W. Va.	7/24/64	Welfare Dept.	Social Worker	Fel. and Misd.	Within 12 Hours	Post	Yes	Obj.	Pos., Neg.	Judge	Project	7/24/64 - 9/23/65	211	156	74%	106	65%	No	No	1
Huntington, W. Va.	11/25/64	Welfare Dept.	Probation Officer	Fel.	Within 3 Days	Post	Yes	Obj.	Pos., Neg., Specific Bail	Judge	Court	11/25/64 - 9/1/65	65	15	23%	10	67%	No	No	0
Madison, Wisc. (Dane Cty.)	10/1/64	Bar Assn., Legal Aid	Law Students	Fel. and Misd.	Within 12 Hours	Pre	Yes	Obj.	Pos., Report without Rec.	Judge	Court	10/1/64 - 5/15/65	70	26	37%	11	42%	No	No	0

Text of ABA Standards Relating to Pretrial Release

(Approved Draft, 1968)

PART I. GENERAL PRINCIPLES

1.1 Policy favoring release.

The law favors the release of defendants pending determination of guilt or innocence. Deprivation of liberty pending trial is harsh and oppressive in that it subjects persons whose guilt has not yet been judicially established to economic and psychological hardship, interferes with their ability to defend themselves and, in many cases, deprives their families of support. Moreover, the maintenance of jailed defendants and their families represents major public expense.

1.2 Conditions on release.

(a) Release on order to appear or on his own recognizance. Each jurisdiction should adopt procedures designed to increase the number of defendants released on an order to appear or on their own recognizance. Additional conditions should be imposed on release only where the need is demonstrated by the facts of the individual case. Methods for providing the appropriate judicial officer with a reliable statement of the facts relevant to the release decision should be developed.

(b) Non-monetary conditions. Such non-monetary conditions as constitutionally may be imposed should be employed to assure the defendant's appearance at court and to prevent the commission of criminal violations while the defendant is at liberty pending adjudication.

(c) Money bail. Reliance on money bail should be reduced to minimal proportions. It should be required only in cases in which no other condition will reasonably ensure the defendant's appearance. Compensated sureties should be abolished, and in those cases in which money bail is required the defendant should ordinarily be released upon the deposit of cash or securities equal to 10 percent of the amount of the bail.

1.3 Willful failure to appear.

Willful failure to appear in court in response to a citation or summons or when released on order to appear, on one's own recognizance or on bail should be made a criminal offense. Proof that the defendant failed to appear when required should constitute prima facie evidence that the failure was willful.

Text of ABA Standards Relating to Pretrial Release

(Approved Draft, 1968) (Cont'd)

1.4 Definitions.

(a) Citation. A written order issued by a law enforcement officer requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time. The form should require the signature of the person to whom it is issued.

(b) Summons. An order issued by a court requiring a person against whom a criminal charge has been filed to appear in a designated court at a specified date and time.

(c) Order to appear. An order issued by the court at or after the defendant's first appearance releasing him from custody or continuing him at large pending disposition of his case but requiring him to appear in court or in some other place at all appropriate times.

(d) Release on own recognizance. The release of a defendant without bail upon his promise to appear at all appropriate times, sometimes referred to as "personal recognizance."

(e) Release on bail. The release of a defendant upon the execution of a bond, with or without sureties, which may or may not be secured by the pledge of money or property.

(f) First appearance. That proceeding at which a defendant initially is taken before a judicial officer after his arrest.

PART II. RELEASE BY LAW ENFORCEMENT OFFICER ACTING WITHOUT AN ARREST WARRANT

2.2 Mandatory issuance of citation.*

(a) Legislative or court rules should be adopted which enumerate the minor offenses for which citations must be issued. A police officer who has ground to charge a person with such a listed offense should be required to issue a citation in lieu of arrest or, if an arrest has been made, to issue a citation in lieu of taking the accused to the police station or to court.

(b) When an arrested person has been taken to a police station and a decision has been made to charge him with an offense for which the total imprisonment may not exceed 6 months, the responsible officer should be required to issue a citation in lieu of continued custody.

Text of ABA Standards Relating to Pretrial Release

(Approved Draft, 1968) (Cont'd)

(c) [Instead of issuing a citation as required above, an officer having authority to do so may arrest:] The requirement to issue a citation set forth in (a) and (b) of this section need not apply and a warrant may be issued:

(i) where an accused subject to lawful arrest fails to identify himself satisfactorily;

(ii) where an accused refuses to sign the citation;

(iii) where arrest or detention is necessary to prevent imminent bodily harm to the accused or to another;

(iv) where the accused has no ties to the jurisdiction reasonably sufficient to assure his appearance and there is a substantial likelihood that he will refuse to respond to a citation;

(v) where the accused previously has failed to appear in response to a citation [for an offense other than a minor one such as a parking violation.] concerning which he has given his written promise to appear.

(d) When an officer makes an arrest pursuant to subsection (c) above, he should be required to indicate his reasons in writing.

2.3 Permissive authority to issue citations in all cases.

(a) Authority. A law enforcement officer acting without a warrant who has reasonable cause to believe that a person has committed any offense should be authorized by law to issue a citation in lieu of arrest or continued custody. The authority to issue citations in serious crimes should not extend to the patrolman in the field but should be limited to the appropriate supervising officer in the police station. The statute authorizing such action should require that the appropriate judicial or administrative agency promulgate detailed rules of procedure governing the exercise of authority to issue citations.

(b) Implementation. Each law enforcement agency should promulgate regulations designed to increase the use of citations to the greatest degree consistent with public safety. Except where arrest or continued custody is patently necessary, the regulations should require such inquiry as is practicable into the accused's place and length of residence, his family relationships, references, present and past employment, his criminal record, and any other facts relevant to appearance in response to a citation.

Text of ABA Standards Relating to Pretrial Release

(Approved Draft, 1968) (Cont'd)

2.4 Lawful searches.

Nothing in these standards should be construed to affect a law enforcement officer's authority to conduct an otherwise lawful search even though a citation is issued.

2.5 Persons in need of care.

Notwithstanding that a citation is issued, a law enforcement officer should be authorized to take a cited person to an appropriate medical facility if he appears mentally or physically unable to care for himself.

PART III. ISSUANCE OF SUMMONS IN LIEU OF ARREST WARRANT

3.1 Authority to issue summons.

All judicial officers should be given statutory authority to issue a summons rather than an arrest warrant in all cases in which a complaint, information, or indictment is filed or returned against a person not already in custody.

3.2 Mandatory issuance of summons.

The issuance of a summons rather than an arrest warrant should be mandatory in all cases in which the maximum sentence for the offense charged does not exceed six months imprisonment, unless the judicial officer finds that:

(a) the defendant previously has failed to respond to a citation or summons for an offense other than a minor one such as a parking violation; or

(b) he has no ties to the community and there is a substantial likelihood that he will refuse to respond to a summons; or

(c) the whereabouts of the defendant are unknown and the issuance of an arrest warrant is necessary in order to subject him to the jurisdiction of the court.

(d) where arrest is necessary to prevent imminent bodily harm to the accused or to another.

Text of ABA Standards Relating to Pretrial Release

(Approved Draft, 1968) (Cont'd)

3.3 Application for an arrest warrant or summons.

(a) It should be the policy to issue a summons in any case except one in which there is reasonable cause to believe that, unless taken into custody, the defendant will flee to avoid prosecution or will fail to respond to a summons.

(b) At the time of the presentation of an application for an arrest warrant or summons, the judicial officer should require the applicant to produce such information as reasonable investigation would reveal concerning the defendant's:

(i) residence,

(ii) employment,

(iii) family relationships,

(iv) past history of response to legal process, and

(v) past criminal record.

(c) The judicial officer should be required to issue a summons in lieu of an arrest warrant when the prosecuting attorney so requests.

(d) In any case in which the judicial officer issues a warrant he shall state his reasons for failing to issue a summons.

3.4 Service of summons.

Statutes prescribing the methods of service of criminal process should include authority to serve a summons by certified mail.

PART IV. RELEASE BY JUDICIAL OFFICER AT FIRST APPEARANCE OR ARRAIGNMENT

4.1 Prompt first appearance.

Except where he is released on citation or in some other lawful manner, every arrested person should be taken before a judicial officer without unnecessary delay.

4.2 Appointment of counsel.

Where practicable, it should be determined prior to first appearance whether the defendant is financially unable to afford counsel and whether he desires representation. Counsel should be appointed no later than the time of first appearance and, if necessary, may be appointed for the limited purpose of representing the defendant only at first appearance or arraignment and at subsequent proceedings before the lower court.

Text of ABA Standards Relating to Pretrial Release

(Approved Draft, 1968) (Cont'd)

4.3 Nature of first appearance.

(a) The first appearance before a judicial officer should take place in such physical surroundings and with such unhurried and quiet dignity as are appropriate to the administration of justice. Each case should receive individual treatment, and decisions should be based on the particular facts of that case. The proceedings should be conducted in clear and easily understandable language calculated to advise the defendant effectively of his rights and of the actions to be taken against him. The appearance should be conducted in such a way that other interested persons present may be informed of the proceedings.

(b) Upon the defendant's first appearance the judicial officer should inform him of the charge and provide him with a copy thereof. He also should take such steps as are reasonably necessary to ensure that the defendant is adequately advised of the following:

(i) that he is not required to say anything, and that anything he says may be used against him;

(ii) if he is as yet unrepresented, that he has a right to counsel and, if he is financially unable to afford counsel, that counsel forthwith will be appointed;

(iii) that he has a right to communicate with his counsel, his family, or his friends, and that, if necessary, reasonable means will be provided to enable him to do so; and

(iv) where applicable, that he has a right to a preliminary examination.

(c) An appropriate record of the proceedings should be made. The defendant also should be advised of the nature and approximate schedule of all further proceedings to be taken in his case.

(d) No further steps in the proceedings should be taken until the defendant and his counsel have had an adequate opportunity to confer, unless the defendant has intelligently waived the right to be represented by counsel.

(e) In every case not finally disposed of at first appearance, and except in those cases in which the prosecuting attorney has stipulated that the defendant may be released on order to appear or on his own recognizance, the judicial officer should decide in accordance with the standards hereinafter set forth the question of the defendant's pretrial release.

Text of ABA Standards Relating to Pretrial Release

(Approved Draft, 1968) (Cont'd)

(f) It should be the policy of prosecuting attorneys to encourage the release of defendants upon an order to appear or on their own recognizance. Special efforts should be made to enter into stipulations to that effect in order to avoid unnecessary pretrial release inquiries and to promote efficiency in the administration of justice.

4.4 Release of defendants subject to one year maximum sentence.

A defendant charged with an offense subject to no more than one year's imprisonment should be released by a judicial officer on order to appear or on his own recognizance without the special inquiry prescribed hereafter, unless a law enforcement official gives notice to the judicial officer that he intends to oppose such release. If such a notice is given, the inquiry should be conducted.

4.5 Pre-first appearance inquiry.

(a) In all cases in which the defendant is in custody and the maximum penalty exceeds one year, an inquiry into the facts relevant to pretrial release should be conducted prior to or contemporaneous with the defendant's first appearance. However, no such inquiry need be conducted if the prosecution advises that it does not oppose release on order to appear or on his own recognizance.

(b) The inquiry should be undertaken by an independent agency or by an arm of the court although, if these means are impracticable, the duty may be assigned to the public or other defender agency, to the prosecuting attorney, or to a law enforcement agency.

(c) In appropriate cases, the inquiry may be conducted in open court. Inquiry of the defendant should carefully exclude questions concerning the details of the current charge.

(d) The inquiry should be exploratory and may include such factors as:

(i) the defendant's employment status and history and his financial condition;

(ii) the nature and extent of his family relationships;

(iii) his past and present residences;

(iv) his character and reputation;

(v) names of persons who agree to assist him in attending court at the proper time;

Text of ABA Standards Relating to Pretrial Release

(Approved Draft, 1968) (Cont'd)

(vi) the nature of the current charge and any mitigating or aggravating factors that may bear on the likelihood of conviction and the possible penalty;

(vii) the defendant's prior criminal record, if any and, if he previously has been released pending trial, whether he appeared as required;

(viii) any facts indicating the possibility of violations of law if the defendant is released without restrictions; and

(ix) any other facts tending to indicate that the defendant has strong ties to the community and is not likely to flee the jurisdiction.

(e) Where appropriate, the inquiring agency should make recommendations to the judicial officer concerning the conditions, if any, which should be imposed on the defendant's release. The results of the inquiry and the recommendations should be made known to all parties at the first appearance.

PART V. THE RELEASE DECISION

5.1 Release on order to appear or on defendant's own recognizance.

(a) It should be presumed that the defendant is entitled to be released on order to appear or on his own recognizance. The presumption may be overcome by a finding that there is substantial risk of nonappearance, or a need for conditions as provided in section 5.2 or for prohibitions as provided in section 5.5. In capital cases, the defendant may be detained pending trial if the facts support a finding that the defendant is likely to commit a serious crime, intimidate witnesses or otherwise interfere with the administration of justice or will flee if released.

(b) In determining whether there is a substantial risk of nonappearance, the judicial officer should take into account the following factors concerning the defendant:

(i) the length of his residence in the community;

(ii) his employment status and history and his financial condition;

(iii) his family ties and relationships;

(iv) his reputation, character and mental condition;

(v) his prior criminal record, including any record of prior release on recognizance or on bail;

Text of ABA Standards Relating to Pretrial Release

(Approved Draft, 1968) (Cont'd)

(vi) the identity of responsible members of the community who would vouch for defendant's reliability;

(vii) the nature of the offense presently charged and the apparent probability of conviction and the likely sentence, insofar as these factors are relevant to the risk of nonappearance; and

(viii) any other factors indicating the defendant's ties to the community or bearing on the risk of willful failure to appear.

(c) In evaluating these and any other factors, the judicial officer should exercise care not to give inordinate weight to the nature of the present charge.

(d) In the event the judicial officer determines that release on order to appear or on his own recognizance is unwarranted, he should include in the record a statement of his reasons.

5.2 Conditions on release.

(a) Upon a finding that release on order to appear or on defendant's own recognizance is unwarranted, the judicial officer should impose the least onerous condition reasonably likely to assure the defendant's appearance in court.

(b) Where conditions on release are found necessary, the judicial officer should impose one or more of the following conditions:

(i) release the defendant into the care of some qualified person or organization responsible for supervising the defendant and assisting him in appearing in court. Such supervisor should be expected to maintain close contact with the defendant, to assist him in making arrangements to appear in court and, where appropriate, to accompany him to court. The supervisor should not be required to be financially responsible for the defendant, nor to forfeit money in the event he fails to appear in court;

(ii) place the defendant under the supervision of a probation officer or other appropriate public official;

(iii) impose reasonable restrictions on the activities, movements, associations and residences of the defendant;

(iv) where permitted by law, release the defendant during working hours but require him to return to custody at specified times; or

(v) impose any other reasonable restriction designed to assure the defendant's appearance.

Text of ABA Standards Relating to Pretrial Release

(Approved Draft, 1968)(Cont'd)

5.3 Release on money bail.

(a) Money bail should be set only when it is found that no other conditions on release will reasonably assure the defendant's appearance in court.

(b) The sole purpose of money bail is to assure the defendant's appearance. Money bail should not be set to punish or frighten the defendant, to placate public opinion or to prevent anticipated criminal conduct.

(c) Upon finding that money bail should be set, the judicial officer should require one of the following:

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

(ii) the execution of an unsecured bond in an amount specified by the judicial officer, accompanied by the deposit of cash or securities equal to 10 percent of the face amount of the bond. The deposit, less a reasonable administrative fee, should be returned at the conclusion of the proceedings, provided the defendant has not defaulted in the performance of the conditions of the bond; or

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

(d) Money bail should be set no higher than that amount reasonably required to assure the defendant's appearance in court. In setting the amount of bail the judicial officer should take into account all facts relevant to the risk of willful nonappearance, including:

(i) the length and character of the defendant's residence in the community;

(ii) his employment status and history and his financial condition;

(iii) his family ties and relationships;

(iv) his reputation, character and mental condition;

(v) his past history of response to legal process;

(vi) his prior criminal record;

(vii) the identity of responsible members of the community who would vouch for the defendant's reliability;

(viii) the nature of the current charge, the apparent probability of conviction and the likely sentence, insofar as these factors are relevant to the risk of nonappearance; and

Text of ABA Standards Relating to Pretrial Release

(Approved Draft, 1968) (Cont'd)

(ix) any other factors indicating the defendant's roots in the community.

(e) Money bail should never be set by reference to a predetermined schedule of amounts fixed according to the nature of the charge but should be the result of an individualized decision, taking into account the special circumstances of each defendant.

(f) Money bail should be distinguished from the practice of allowing a defendant charged with a traffic or other minor offense to post a sum of money to be forfeited in lieu of any court appearance. This is in the nature of a stipulated fine and, where permitted, may be employed according to a predetermined schedule.

5.4 Prohibition of compensated sureties.

No person should be allowed to act as a surety for compensation. In any action to enforce an indemnity agreement between a principal and a surety on a bail bond it should be a complete defense that the surety acted for compensation. No attorney should be permitted to act as surety on a bail bond.

5.5 Prohibition of wrongful acts pending trial.

Upon a showing that there exists a danger that the defendant will commit a serious crime or will seek to intimidate witnesses, or will otherwise unlawfully interfere with the orderly administration of justice, the judicial officer, upon the defendant's release, may enter an order:

(a) prohibiting the defendant from approaching or communicating with particular persons or classes of persons, except that no such order should be deemed to prohibit any lawful and ethical activity of defendant's counsel;

(b) prohibiting the defendant from going to certain described geographical areas or premises;

(c) prohibiting the defendant from possessing any dangerous weapon, or engaging in certain described activities or indulging in intoxicating liquors or in certain drugs;

(d) requiring the defendant to report regularly to and remain under the supervision of an officer of the court.

Text of ABA Standards Relating to Pretrial Release

(Approved Draft, 1968) (Cont'd)

5.6 Violations of conditions on release.

Upon a verified application by the prosecuting attorney alleging that a defendant has willfully violated the conditions of his release, a judicial officer should issue a warrant directing that the defendant be arrested and taken forthwith before the court of general criminal jurisdiction for hearing. A law enforcement officer having reasonable grounds to believe that a released felony defendant has violated the conditions of his release should be authorized, where it would be impracticable to secure a warrant, to arrest the defendant and take him forthwith before the court of general criminal jurisdiction.

5.7 Sanctions for violation of conditions.

After hearing, and upon finding that the defendant has willfully violated reasonable conditions imposed on his release, the court should be authorized to impose different or additional conditions upon defendant's release or revoke his release.

5.8 Commission of serious crime while awaiting trial.

Where it is shown that a competent court or grand jury has found probable cause to believe that a defendant has committed a serious crime while released pending adjudicating of a prior charge, the court which initially released him should be authorized [to revoke his release.], after appropriate hearing, to review and revise the conditions of his release or to revoke his release where indicated. In cases in which release is revoked, the case should be tried as soon as possible.

5.9 Re-examination and review of the release decision.

(a) The release decision should be automatically re-examined by the releasing court within a reasonable time in the case of a defendant who has failed to secure his release.

(b) A defendant, whether or not in custody, should be able, on application, to obtain prompt review of the release decision.

(c) Frequent and periodic reports should be made to the court of general jurisdiction as to each defendant who has failed to secure his release within [two weeks] of arrest. The prosecuting attorney should be required to advise the court of the status of the case and why defendant has not been released or tried.

Text of ABA Standards Relating to Pretrial Release

(Approved Draft, 1968) (Cont'd)

5.10 Accelerated trial for detained defendants.

Every jurisdiction should adopt, by statute or court rule, a time limitation within which defendants in custody must be tried which is shorter than the limitation applicable to defendants at liberty pending trial. The failure to try a defendant held in custody within the prescribed period should result in his immediate release from custody pending trial.

5.11 Trial.

The fact that a defendant has been detained pending trial should not be allowed to prejudice him at the time of trial or sentencing. [Care should be taken to ensure that the trial jury is unaware of the defendant's detention.]

5.12 Credit for pretrial detention.

Every convicted defendant should be given credit, against both a maximum and a minimum term, for all time spent in custody as a result of the criminal charge for which a prison sentence is imposed, or as a result of the underlying conduct on which such a charge is based.

# # # #

Partial Text of The Bail Reform Act, 1966

§ 3141. Power of courts and magistrates

Bail may be taken by any court, judge or magistrate authorized to arrest and commit offenders, but only a court of the United States having original jurisdiction in criminal cases, or a justice or judge thereof, may admit to bail or otherwise release a person charged with an offense punishable by death.

June 25, 1948, c. 645, 62 Stat. 821; June 22, 1966, Pub.L. 89–465, § 5 (b), 80 Stat. 217.

§ 3142. Surrender by bail

Any party charged with a criminal offense who is released on the execution of an appearance bail bond with one or more sureties, may, in vacation, be arrested by his surety, and delivered to the marshal or his deputy, and brought before any judge or other officer having power to commit for such offense; and at the request of such surety, the judge or other officer shall recommit the party so arrested to the custody of the marshal, and indorse on the recognizance, or certified copy thereof, the discharge and exoneretur of such surety; and the person so committed shall be held in custody until discharged by due course of law.

June 25, 1948, c. 645, 62 Stat. 821; June 22, 1966, Pub.L. 89–465, § 5(c), 80 Stat. 217.

§ 3143. Additional bail

When proof is made to any judge of the United States, or other magistrate authorized to commit on criminal charges, that a person previously released on the execution of an appearance bail bond with one or more sureties on any such charge is about to abscond, and that his bail is insufficient, the judge or magistrate shall require such person to give better security, or, for default thereof, cause him to be committed; and an order for his arrest may be indorsed on the former commitment, or a new warrant therefor may be issued, by such judge or magistrate, setting forth the cause thereof.

June 25, 1948, c. 645, 62 Stat. 821; June 22, 1966, Pub.L. 89–465, § 5(d), 80 Stat. 217.

§ 3144. Cases removed from State courts

Whenever the judgment of a State Court in any criminal proceeding is brought to the Supreme Court of the United States for review, the defendant shall not be released from custody until a final judgment upon such review, or, if the offense be bailable, until a bond, with sufficient sureties, in a reasonable sum, is given.

June 25, 1948, c. 645, 62 Stat. 821.

Partial Text of The Bail Reform Act, 1966 (Cont'd)

§ 3145. Parties and witnesses—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

On Preliminary Examination, Rule 5(b).
Before conviction; amount; sureties; forfeiture; exoneration, Rule 46.
Pending sentence, Rule 32(a).
Pending appeal or certiorari, Rules 38(b), (c), 39(a), 46(a, 2).[1]
Witness, Rule 46.

June 25, 1948, c. 645, 62 Stat. 821.

[1] Rules 38(b), (c), 39(a), abrogated, Dec. 4, 1967, eff. July 1, 1968. See Federal Rules of Appellate Procedure, 28 U.S.C.A.

§ 3146. Release in noncapital cases prior to trial

(a) Any person charged with an offense, other than an offense punishable by death, shall, at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(1) place the person in the custody of a designated person or organization agreeing to supervise him;

(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(4) require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

(5) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

(b) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

Partial Text of The Bail Reform Act, 1966 (Cont'd)

(c) A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon any such violation.

(d) A person for whom conditions of release are imposed and who after twenty-four hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed conditions of release is not available, any other judicial officer in the district may review such conditions.

(e) A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release: *Provided*, That, if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection (d) shall apply.

(f) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(g) Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

Added Pub.L. 89-465, § 3(a), June 22, 1966, 80 Stat. 214.

§ 3147. Appeal from conditions of release

(a) A person who is detained, or whose release on a condition requiring him to return to custody after specified hours is continued, after review of his application pursuant to section 3146(d) or section 3146(e) by a judicial officer, other than a judge of the court having original jurisdiction over the offense with which he is charged or a judge of a United States court of appeals or a Justice of the Supreme Court, may move the court having original jurisdiction over the offense with which he is charged to amend the order. Said motion shall be determined promptly.

Partial Text of The Bail Reform Act, 1966 (Cont'd)

(b) In any case in which a person is detained after (1) a court denies a motion under subsection (a) to amend an order imposing conditions of release, or (2) conditions of release have been imposed or amended by a judge of the court having original jurisdiction over the offense charged, an appeal may be taken to the court having appellate jurisdiction over such court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If the order is not so supported, the court may remand the case for a further hearing, or may, with or without additional evidence, order the person released pursuant to section 3146(a). The appeal shall be determined promptly.

Added Pub.L. 89–465, § 3(a), June 22, 1966, 80 Stat. 215.

§ 3148. Release in capital cases or after conviction

A person (1) who is charged with an offense punishable by death, or (2) who has been convicted of an offense and is either awaiting sentence or sentence review under section 3576 of this title or has filed an appeal or a petition for a writ of certiorari, shall be treated in accordance with the provisions of section 3146 unless the court or judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained. The provisions of section 3147 shall not apply to persons described in this section: *Provided*, That other rights to judicial review of conditions of release or orders of detention shall not be affected.

As amended Pub.L. 91–452, Title X, § 1002, Oct. 15, 1970, 84 Stat. 952.

§ 3149. Release of material witnesses

If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and if it is shown that it may become impracticable to secure his presence by subpena, a judicial officer shall impose conditions of release pursuant to section 3146. No material witness shall be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

Added Pub.L. 89–465, § 3(a), June 22, 1966, 80 Stat. 216.

§ 3150. Penalties for failure to appear

Whoever, having been released pursuant to this chapter, willfully fails to appear before any court or judicial officer as required, shall, subject to the provisions of the Federal Rules of Criminal Procedure,

Partial Text of The Bail Reform Act, 1966 (Cont'd)

incur a forfeiture of any security which was given or pledged for his release, and, in addition, shall, (1) if he was released in connection with a charge of felony, or while awaiting sentence or pending appeal or certiorari after conviction of any offense, be fined not more than $5,000 or imprisoned not more than five years, or both, or (2) if he was released in connection with a charge of misdemeanor, be fined not more than the maximum provided for such misdemeanor or imprisoned for not more than one year, or both, or (3) if he was released for appearance as a material witness, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

Added Pub.L. 89–465, § 3(a), June 22, 1966, 80 Stat. 216.

§ 3151. Contempt

Nothing in this chapter shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.

Added Pub.L. 89–465, § 3(a), June 22, 1966, 80 Stat. 216.

§ 3152. Definitions

As used in sections 3146–3150 of this chapter—

(1) The term "judicial officer" means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the District of Columbia Court of General Sessions; and

(2) The term "offense" means any criminal offense, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable in any court established by Act of Congress.

Added Pub.L. 89–465, § 3(a), June 22, 1966, 80 Stat. 216.

# # # #

Partial Text of D.C. Court Reform Act of 1970

"SUBCHAPTER I—DISTRICT OF COLUMBIA BAIL AGENCY

"§ 23–1301. District of Columbia Bail Agency

"The District of Columbia Bail Agency (hereafter in this subchapter referred to as the 'agency') shall continue in the District of Columbia and shall secure pertinent data and provide for any judicial officer in the District of Columbia or any officer or member of the Metropolitan Police Department issuing citations, reports containing verified information concerning any individual with respect to whom a bail or citation determination is to be made.

"§ 23–1302. Definitions

"As used in this chapter—

"(1) the term 'judicial officer' means, unless otherwise indicated, the Supreme Court of the United States, the United States Court of Appeals for the District of Columbia Circuit, the District of Columbia Court of Appeals, United States District Court for the District of Columbia, the Superior Court of the District of Columbia or any justice or judge of those courts or a United States commissioner or magistrate; and

"(2) the term 'bail determination' means any order by a judicial officer respecting the terms and conditions of detention or release (including any order setting the amount of bail bond or any other kind of security) made to assure the appearance in court of—

"(A) any person arrested in the District of Columbia, or

"(B) any material witness in any criminal proceeding in a court referred to in paragraph (1).

"§ 23–1303. Interviews with detainees; investigations and reports; information as confidential; consideration and use of reports in making bail determinations

"(a) The agency shall, except when impracticable, interview any person detained pursuant to law or charged with an offense in the District of Columbia who is to appear before a judicial officer or whose case arose in or is before any court named in section 23–1302(1). The interview, when requested by a judicial officer, shall also be undertaken with respect to any person charged with intoxication or a traffic violation. The agency shall seek independent verification of information obtained during the interview, shall secure any such person's prior criminal record which shall be made available by the Metropolitan Police Department, and shall prepare a written report of the information for submission to the appropriate judicial officer. The report to the judicial officer shall, where appropriate, include a recommendation as to whether such person

Partial Text of D.C. Court Reform Act of 1970 (Cont'd)

should be released or detained under any of the conditions specified in subchapter II of this chapter. If the agency does not make a recommendation, it shall submit a report without recommendation. The agency shall provide copies of its report and recommendations (if any) to the United States attorney for the District of Columbia or the Corporation Counsel of the District of Columbia, and to counsel for the person concerning whom the report is made. The report shall include but not be limited to information concerning the person accused, his family, his community ties, residence, employment, and prior criminal record, and may include such additional verified information as may become available to the agency.

"(b) With respect to persons seeking review under subchapter II of this chapter of their detention or conditions of release, the agency shall review its report, seek and verify such new information as may be necessary, and modify or supplement its report to the extent appropriate.

"(c) The agency, when requested by any appellate court or a judge or justice thereof, or by any other judicial officer, shall furnish a report as provided in subsection (a) of this section respecting any person whose case is pending before any such appellate court or judicial officer or in whose behalf an application for a bail determination shall have been submitted.

"(d) Any information contained in the agency's files, presented in its report, or divulged during the course of any hearing shall not be admissible on the issue of guilt in any judicial proceeding, but such information may be used in proceedings under sections 23–1327, 23–1328, and 23–1329, in perjury proceedings, and for the purposes of impeachment in any subsequent proceeding.

"(e) The agency, when requested by a member or officer of the Metropolitan Police Department acting pursuant to court rules governing the issuance of citations in the District of Columbia, shall furnish to such member or officer a report as provided in subsection (a).

"(f) The preparation and the submission by the agency of its report as provided in this section shall be accomplished at the earliest practicable opportunity.

"(g) A judicial officer in making a bail determination shall consider the agency's report and its accompanying recommendation, if any. The judicial officer may order such detention or may impose such terms and set such conditions upon release, including requiring the execution of a bail bond with sufficient solvent sureties as shall appear warranted by the facts, except that such judicial officer may not order any detention or establish any term or condition for release not otherwise authorized by law.

"(h) The agency shall—

"(1) supervise all persons released on nonsurety release, including release on personal recognizance, personal bond, nonfinancial conditions, or cash deposit or percentage deposit with the registry of the court;

Partial Text of D.C. Court Reform Act of 1970 (Cont'd)

"(2) make reasonable effort to give notice of each required court appearance to each person released by the court;

"(3) serve as coordinator for other agencies and organizations which serve or may be eligible to serve as custodians for persons released under supervision and advise the judicial officer as to the eligibility, availability, and capacity of such agencies and organizations;

"(4) assist persons released pursuant to subchapter II of this chapter in securing employment or necessary medical or social services;

"(5) inform the judicial officer and the United States attorney for the District of Columbia or the Corporation Counsel of the District of Columbia of any failure to comply with pretrial release conditions or the arrest of persons released under its supervision and recommend modifications of release conditions when appropriate;

"(6) prepare, in cooperation with the United States marshal for the District of Columbia and the United States attorney for the District of Columbia, such pretrial detention reports as are required by Rule 46(h) of the Federal Rules of Criminal Procedure; and

"(7) perform such other pretrial functions as the executive committee may, from time to time, assign.

"§ 23-1304. Executive committee; composition; appointment and qualifications of Director

"(a) The agency shall function under authority of and be responsible to an executive committee of five members of which three shall constitute a quorum. The executive committee shall be composed of the respective chief judges of the United States Court of Appeals for the District of Columbia Circuit, the United States District Court for the District of Columbia, the District of Columbia Court of Appeals, the Superior Court, or if circumstances may require, the designee of any such chief judge, and a fifth member who shall be selected by the chief judges.

"(b) The executive committee shall appoint a Director of the agency who shall be a member of the bar of the District of Columbia.

"§ 23-1305. Duties of Director; compensation; tenure

"The Director of the agency shall be responsible for the supervision and execution of the duties of the agency. The Director shall receive such compensation as may be set by the executive committee but not in excess of the compensation authorized for GS-16 of the General Schedule contained in section 5332 of title 5, United States Code. The Director shall hold office at the pleasure of the executive committee.

"§ 23-1306. Chief assistant and other agency personnel; compensation

"The Director, subject to the approval of the executive committee, shall employ a chief assistant and such assisting and clerical staff

Partial Text of D.C. Court Reform Act of 1970 (Cont'd)

and may make assignments of such agency personnel as may be necessary properly to conduct the business of the agency. The staff of the agency, other than clerical, shall be drawn from law students, graduate students, or such other available sources as may be approved by the executive committee. The chief assistant to the Director shall receive compensation as may be set by the executive committee, but in an amount not in excess of the amount authorized for GS–14 of the General Schedule contained in section 5332 of title 5, United States Code, and shall hold office at the pleasure of the executive committee. All other employees of the agency shall receive compensation, as set by the executive committee, which shall be comparable to levels of compensation established in such chapter 53. From time to time, the Director, subject to the approval of the executive committee, may set merit and longevity salary increases.

"§ 23–1307. Annual reports to executive committee, Congress, and Commissioner

"The Director shall on June 15 of each year submit to the executive committee a report as to the agency's administration of its responsibilities for the previous period of June 1 through May 31, a copy of which report will be transmitted by the executive committee to the Congress of the United States, and to the Commissioner of the District of Columbia. The Director shall include in his report, to be prepared as directed by the Commissioner of the District of Columbia, a statement of financial condition, revenues, and expenses for the past June 1 through May 31 period.

"§ 23–1308. Budget estimates

"Budget estimates for the agency shall be prepared by the Director and shall be subject to the approval of the executive committee.

# # # #

TEXT OF REVISIONS OF OTHER STATES

Text of Illinois Code of Criminal Procedure of 1963

§ 110—1. Definitions

(a) "Security" is that which is required to be pledged to insure the payment of bail.

(b) "Surety" is one who executes a bail bond and binds himself to pay the bail if the person in custody fails to comply with all conditions of the bail bond. 1963, Aug. 14, Laws 1963, p. 2836, § 110–1.

§ 110—2. Release on Own Recognizance

When from all the circumstances the court is of the opinion that the accused will appear as required either before or after conviction the accused may be released on his own recognizance. A failure to appear as required by such recognizance shall constitute an offense subject to the penalty provided in Section 32—10 of the "Criminal Code of 1961", approved July 28, 1961, as heretofore and hereafter amended,[1] for violation of the bail bond, and any obligated sum fixed in the recognizance shall be forfeited and collected in accordance with subsection (g) of Section 110—7 of this Code.

This Section shall be liberally construed to effectuate the purpose of relying upon criminal sanctions instead of financial loss to assure the appearance of the accused. 1963, Aug. 14, Laws 1963, p. 2836, § 110–2.

§ 110—3. Issuance of Warrant

Upon failure to comply with any condition of a bail bond or recognizance the court having jurisdiction at the time of such failure may, in addition to any other action provided by law, issue a warrant for the arrest of the person at liberty on bail or his own recognizance. 1963, Aug. 14, Laws 1963, p. 2836, § 110–3.

§ 110—4. Bailable Offenses

(a) All persons shall be bailable before conviction, except when death is a possible punishment for the offenses charged and the proof is evident or the presumption great that the person is guilty of the offense.

(b) A person charged with an offense for which death is a possible punishment has the burden of proof that he should be admitted to bail. 1963, Aug. 14, Laws 1963, p. 2836, § 110–4.

Text of Illinois Code of Criminal Procedure of 1963, continued

§ 110—5. Determining the Amount of Bail

(a) The amount of bail shall be:

(1) Sufficient to assure compliance with the conditions set forth in the bail bond;

(2) Not oppressive;

(3) Commensurate with the nature of the offense charged;

(4) Considerate of the past criminal acts and conduct of the defendant;

(5) Considerate of the financial ability of the accused.

(b) When a person is charged with an offense punishable by fine only the amount of the bail shall not exceed double the amount of the maximum penalty.

(c) When a person has been convicted of an offense and only a fine has been imposed the amount of the bail shall not exceed double the amount of the fine. 1963, Aug. 14, Laws 1963, p. 2836, § 110–5.

§ 110—6. Reduction or Increase of Bail

(a) Upon application by the State or the defendant the court before which the proceeding is pending may increase or reduce the amount of bail or may alter the conditions of the bail bond.

(b) Reasonable notice of such application by the defendant shall be given to the State.

(c) Reasonable notice of such application by the State shall be given to the defendant, except as provided in subsection (d).

(d) Upon verified application by the State stating facts or circumstances constituting a breach or a threatened breach of any of the conditions of the bail bond the court may issue a warrant commanding any peace officer to bring the defendant without unnecessary delay before the court for a hearing on the matters set forth in the application. At the conclusion of the hearing the court may enter an order authorized by subsection (a). 1963, Aug. 14, Laws 1963, p. 2836, § 110–6.

§ 110—7. Deposit of Bail Security

(a) The person for whom bail has been set shall execute the bail bond and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10% of the bail, but in no event shall such deposit be less than $25.

Text of Illinois Code of Criminal Procedure of 1963 (Cont'd)

(b) Upon depositing this sum the person shall be released from custody subject to the conditions of the bail bond.

(c) Once bail has been given and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction the latter court shall continue the original bail in that court subject to the provisions of Section 110—6 of this Code.

(d) After conviction the court may order that the original bail stand as bail pending appeal or deny, increase or reduce bail.

(e) After the entry of an order by the trial court allowing or denying bail pending appeal either party may apply to the reviewing court having jurisdiction or to a justice thereof sitting in vacation for an order increasing or decreasing the amount of bail or allowing or denying bail pending appeal.

(f) When the conditions of the bail bond have been performed and the accused has been discharged from all obligations in the cause the clerk of the court shall return to the accused 90% of the sum which had been deposited and shall retain as bail bond costs 10% of the amount deposited. However, in no event shall the amount retained by the clerk as bail bond costs be less than $5.

At the request of the defendant the court may order such 90% of defendant's bail deposit, or whatever amount repayable to defendant, to be paid to defendant's attorney of record.

(g) If the accused does not comply with the conditions of the bail bond the court having jurisdiction shall enter an order declaring the bail to be forfeited. Notice of such order of forfeiture shall be mailed forthwith to the accused at his last known address. If the accused does not appear and surrender to the court having jurisdiction within 30 days from the date of the forfeiture or within such period satisfy the court that appearance and surrender by the accused is impossible and without his fault the court shall enter judgment for the State if the charge for which the bond was given was a felony or misdemeanor, of if the charge was quasi-criminal or traffic, judgment for the political subdivision of the State which prosecuted the case, against the accused for the amount of the bail and costs of the court proceedings. The deposit made in accordance with subsection (a) shall be applied to the payment of costs. If any amount of such deposit remains after the payment of costs it shall be applied to payment of the judgment and transferred to the treasury of the municipal corporation wherein the bond was taken if the offense was a violation of any penal ordinance of a political subdivision of this State, or to the treasury of the county wherein the bond was taken if the offense was a violation of any penal statute of this State. The balance of the judgment may be enforced and collected in the same manner as a judgment entered in a civil action.

(h) After a judgment for a fine and court costs or either is entered in the prosecution of a cause in which a deposit had been made in accordance with subsection (a) the balance of such deposit, after deduction of bail bond costs, shall be applied to the payment of the judgment.
Amended by P.A. 76-2078, § 1, eff. July 1, 1970.

Text of Illinois Code of Criminal Procedure of 1963 (Cont'd)

§ 110–8. Cash, Stocks, Bonds and Real Estate as Security for Bail

(a) In lieu of the bail deposit provided for in Section 110–7 of this Code any person for whom bail has been set may execute the bail bond with or without sureties which bond may be secured:

(1) By a deposit, with the clerk of the court, of an amount equal to the required bail, of cash, or stocks and bonds in which trustees are authorized to invest trust funds under the laws of this State; or

(2) By real estate situated in this State with unencumbered equity not exempt owned by the accused or sureties worth double the amount of bail set in the bond.

(b) If the bail bond is secured by stocks and bonds the accused or sureties shall file with the bond a sworn schedule which shall be approved by the court and shall contain:

(1) A list of the stocks and bonds deposited describing each in sufficient detail that it may be identified;

(2) The market value of each stock and bond;

(3) The total market value of the stocks and bonds listed;

(4) A statement that the affiant is the sole owner of the stocks and bonds listed and they are not exempt from execution;

(5) A statement that such stocks and bonds have not previously been used or accepted as bail in this State during the 12 months preceding the date of the bail bond; and

(6) A statement that such stocks and bonds are security for the appearance of the accused in accordance with the conditions of the bail bond.

(c) If the bail bond is secured by real estate the accused or sureties shall file with the bond a sworn schedule which shall contain:

(1) A legal description of the real estate;

(2) A description of any and all encumbrances on the real estate including the amount of each and the holder thereof;

(3) The market value of the unencumbered equity owned by the affiant;

(4) A statement that the affiant is the sole owner of such unencumbered equity and that it is not exempt from execution;

(5) A statement that the real estate has not previously been used or accepted as bail in this State during the 12 months preceding the date of the bail bond; and

(6) A statement that the real estate is security for the appearance of the accused in accordance with the conditions of the bail bond.

Text of Illinois Code of Criminal Procedure of 1963 (Cont'd)

(d) The sworn schedule shall constitute a material part of the bail bond. The affiant commits perjury if in the sworn schedule he makes a false statement which he does not believe to be true. He shall be prosecuted and punished accordingly, or, he may be punished for contempt.

(e) A certified copy of the bail bond and schedule of real estate shall be filed immediately in the office of the registrar of titles or recorder of deeds of the county in which the real estate is situated and the State shall have a lien on such real estate from the time such copies are filed in the office of the registrar of titles or recorder of deeds. The registrar of titles or recorder of deeds shall enter, index and record (or register as the case may be) such bail bonds and schedules without requiring any advance fee, which fee shall be taxed as costs in the proceeding and paid out of such costs when collected.

(f) When the conditions of the bail bond have been performed and the accused has been discharged from his obligations in the cause, the clerk of the court shall return to him or his sureties the deposit of any cash, stocks or bonds. If the bail bond has been secured by real estate the clerk of the court shall forthwith notify in writing the registrar of titles or recorder of deeds and the lien of the bail bond on the real estate shall be discharged.

(g) If the accused does not comply with the conditions of the bail bond the court having jurisdiction shall enter an order declaring the bail to be forfeited. Notice of such order of forfeiture shall be mailed forthwith by the clerk of the court to the accused and his sureties at their last known address. If the accused does not appear and surrender to the court having jurisdiction within 30 days from the date of the forfeiture or within such period satisfy the court that appearance and surrender by the accused is impossible and without his fault the court shall enter judgment for the state against the accused and his sureties for the amount of the bail and costs of the proceedings.

(h) When judgment is entered in favor of the State on any bail bond given for a felony or misdemeanor, or judgment for a political subdivision of the state on any bail bond given for a quasi-criminal or traffic offense, the State's Attorney or political subdivision's attorney shall have execution issued on the judgment forthwith and deliver same to the sheriff to be executed by levy on the cash, stocks or bonds deposited with the clerk of the court and the real estate described in the bail bond schedule. The cash shall be used to satisfy the judgment and costs and paid into the treasury of the municipal corporation wherein the bail bond was taken if the offense was a violation of any penal ordinance of a political subdivision of this State, or into the treasury of the county wherein the bail bond was taken if the offense was a violation of any penal statute of this State. The stocks, bonds and real

Text of Illinois Code of Criminal Procedure of 1963 (Cont'd)

estate shall be sold in the same manner as in execution sales in civil actions and the proceeds of such sale shall be used to satisfy all court costs, prior encumbrances, if any, and from the balance a sufficient amount to satisfy the judgment shall be paid into the treasury of the municipal corporation wherein the bail bond was taken if the offense was a violation of any penal ordinance of a political subdivision of this State, or into the treasury of the county wherein the bail bond was taken if the offense was a violation of any penal statute of this State. The balance shall be returned to the owner. The real estate so sold may be redeemed in the same manner as real estate may be redeemed after judicial or execution sales in civil actions.

(i) No stocks, bonds or real estate may be used or accepted as bail bond security in this State more than once in any 12 month period.

Laws 1963, p. 2836, § 110–8, eff. Jan. 1, 1964, amended by Laws 1967, p. 2365, § 1, eff. July 31, 1967; P.A. 76–1394, § 1, eff. Sept. 19, 1969.

§ 110—9. Taking of Bail by Peace Officer

When bail has been set by a judicial officer for a particular offense or offender any sheriff or other peace officer may take bail in accordance with the provisions of Section 110—7 or 110—8 of this Code and release the offender to appear in accordance with the conditions of the bail bond, the Notice to Appear or the Summons. The officer shall give a receipt to the offender for the bail so taken and within a reasonable time deposit such bail with the clerk of the court having jurisdiction of the offense. 1963, Aug. 14, Laws 1963, p. 2836, § 110–9.

§ 110–10. Conditions of Bail Bond

(a) If a person is admitted to bail before conviction the conditions of the bail bond shall be that he will:

(1) Appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court;

(2) Submit himself to the orders and process of the court; and

(3) Not depart this State without leave; and

(4) Such other reasonable conditions as the court may impose.

(b) If the defendant is admitted to bail after conviction the conditions of the bail bond shall be that he will:

(1) Duly prosecute his appeal;

(2) Appear at such time and place as the court may direct;

(3) Not depart this State without leave of the court;

(4) Such other reasonable conditions as the court may impose and

(5) If the judgment is affirmed or the cause reversed and remanded for a new trial, forthwith surrender to the officer from whose custody he was bailed.

Laws 1963, p. 2836, § 110–10, eff. Jan. 1, 1964, amended by P.A. 76–1394, § 1, eff. Sept. 19, 1969.

Text of Illinois Code of Criminal Procedure of 1963 (Cont'd)

§ 110—11. Bail on a New Trial

If the judgment of conviction is reversed and the cause remanded for a new trial the trial court may order that the bail stand pending such trial, or reduce or increase bail. 1963, Aug. 14, Laws 1963, p. 2836, § 110-11.

§ 110—12. Notice of Change of Address

A person who has been admitted to bail shall give written notice to the clerk of the court before which the proceeding is pending of any change in his address within 24 hours after such change. 1963, Aug. 14, Laws 1963, p. 2836, § 110-12.

§ 110—13. Persons Prohibited from Furnishing Bail Security

No attorney at law practicing in this State and no official authorized to admit another to bail or to accept bail shall furnish any part of any security for bail in any criminal action or any proceeding nor shall any such person act as surety for any accused admitted to bail. 1963, Aug. 14, Laws 1963, p. 2836, § 110-13.

§ 110—14. Credit for Incarceration on Bailable Offense

Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of $5 for each day so incarcerated prior to conviction except that in no case shall the amount so allowed or credited exceed the amount of the fine. 1963, Aug. 14, Laws 1963, p. 2836, § 110-14.

§ 110-15. Applicability of Provisions for Giving and Taking Bail

The provisions of Sections 110-7 and 110-8 of this Code are exclusive of other provisions of law for the giving, taking, or enforcement of bail. In all cases where a person is admitted to bail the provisions of Sections 110-7 and 110-8 of this Code shall be applicable.

However, the Supreme Court may, by rule or order, prescribe a uniform schedule of amounts of bail in specified traffic and conservation cases, quasi-criminal offenses, and misdemeanors. Such uniform schedule may provide that the cash deposit provisions of Section 110-7 shall not apply to bail amounts established for alleged violations punishable by fine alone, and the schedule may further provide that in specified traffic cases a valid Illinois chauffeur's or operator's license must be deposited, in addition to 10% of the amount of the bail specified in the schedule.

Laws 1963, p. 2836, § 110-15, eff. Jan. 1, 1964, amended by Laws 1965, p. 1976, § 1, eff. July 22, 1965; Laws 1967, p. 2969, § 1, eff. Aug. 14, 1967.

# # # #

Release of Defendants
Proposed Amendments
August 15, 1972

Section 2. Release assistance officer. (1) Any magistrate may designate a Release Assistance Officer who shall, except when impracticable, interview every person detained pursuant to law and charged with an offense.

(2) The Release Assistance Officer shall verify release criteria information and timely submit a written report to the magistrate containing, but not limited to, an evaluation of the release criteria and a recommendation for the form of release.

(3) The magistrate may appoint Release Assistance Deputies who shall be responsible to the Release Assistance Officer.

* * *

Section 11.

(3) When judgment is entered in favor of the state, or any political subdivision of the state, on any security given for a release, the district attorney shall have execution issued on the judgment forthwith and deliver same to the sheriff to be executed by levy on the deposit or security amount made in accordance with section 8 of this Article.

* * *

Section 12.

(3) After judgment of conviction in municipal, justice or district court, the court shall order that the original release agreement, and if applicable, the security, stand pending appeal or deny, increase or reduce the release agreement and the security. If a defendant appeals after judgment of conviction in circuit court for any crime other than murder or treason, release shall be discretionary. The circuit court shall consider release criteria and any danger that defendant's release might pose to any other person or the community.

PROPOSED AMENDMENT

Section 4. Release decision. (1) A release decision for all persons in custody should be made during the first 24 hours of custody, but in no case shall a person be in custody longer than 48 hours without a magistrate's release decision. A magistrate may release a defendant through a telephonic order which shall be reduced to writing within 72 hours.

PROPOSED AMENDMENT

Section 4. Release decision. (1) Except as provided in subsection (2) of section 3 of this Article, a person in custody shall have the immediate right to security release or shall be taken before a magistrate without delay. If the person is not released under the provisions of section 10 of this Article, or otherwise released before his arraignment, the magistrate shall advise the person of his right to a security release as provided in sections 8 and 9 of this Article.

(2) If a person in custody does not request a security release at the time of arraignment, the magistrate shall make a release decision regarding the person within 48 hours after the arraignment.

(3) The magistrate shall impose the least onerous condition reasonably likely to assure the person's later appearance. A person in custody, otherwise having a right to release, shall be released upon his person recognizance unless release criteria show to the satisfaction of the magistrate that such a release is unwarranted.

(4) Upon a finding that release of the person on his personal recognizance is unwarranted, the magistrate shall impose either conditional release or security release.

(5) This section shall be liberally construed to carry out the purpose of relying upon criminal sanctions instead of financial loss to assure the appearance of the defendant.

PROPOSED AMENDMENT

Section 6. Release agreement. (1) The defendant shall not be released from custody unless he files with the clerk of the court in which the magistrate is presiding a release agreement duly executed by the defendant containing the conditions ordered by the releasing magistrate or deposits ~~any~~ security in the amount specified by the magistrate in accordance with the provisions of this Article.

(2) A failure to appear as required by the release agreement shall be punishable as provided in ORS 162.195 or 162.205.