



Minnesota Judicial Branch Policy

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Pretrial Release Evaluation

I. POLICY STATEMENT

It is the policy of the Minnesota Judicial Branch that judges shall use evidence-based assessment of risk in setting pretrial release conditions and shall presumptively use non-financial release conditions to the greatest degree consistent with evidence-based assessment of flight risk and threat to public safety and to victims of crimes.¹

The Judicial Council, in consultation with the Department of Corrections, must approve the pretrial evaluation form and risk-assessment tool to be used in each county by the local corrections department or its designee when conducting the pretrial evaluation of each defendant arrested and detained for committing certain crimes as required by Minn. Stat. § 629.74. Nothing in this policy shall be read as requiring or authorizing judges to disregard the requirements of Minn. R. Crim. P. 6.02 when making pretrial release decisions.

II. EFFECTIVE DATES

Sections II and IV.D are effective March 1, 2018. The remaining sections are effective January 1, 2019. The staggered effective date will allow for training and implementation of the validated risk assessment tool in 2018.

III. DEFINITIONS

- A. Bail schedule: A document, schedule, form, or guideline that references a predetermined schedule of monetary amounts (i.e., bail) fixed according to the nature of the charge (e.g., misdemeanor theft) and that does not take into account the risk level or characteristics of the defendant. It is commonly a list of

¹ This policy statement is based on the 2013 Conference of Chief Justices, Resolution 3, Endorsing the Conference of State Court Administrators Policy Paper on Evidence-Based Pretrial Release.

offenses and corresponding bail or release amounts based only on the offense level/type.

- B. Pretrial evaluation: The collection and analysis of a particular defendant's information on factors impacting his/her likelihood to appear and risk to public safety. AKA "bail evaluation" or "bail study" or "pretrial bail evaluation."
- C. Pretrial evaluation form: Template for recording factors of a particular defendant and the current charge used to inform the pretrial release decision. A form does not assign a score or recommendation for pretrial release decisions and does not assign a weight for different factors. AKA "pretrial evaluation form" or "bail form."
- D. Pretrial evaluation tool: A research-based (actuarial) instrument comprised of predictive factors that are weighted and scored to provide a recommended pretrial release decision (based on categorized risk of pretrial failure). The tool is used to assist the court in making pretrial release decisions.
- E. Validation: A study of the effectiveness of a particular tool at predicting the outcome it seeks to predict (e.g., pretrial failure) on a particular population.

IV. PROCESS

- A. All pretrial evaluation forms must include a clearly delineated risk-assessment tool validated on the population for which it is used, and must not include:

a recommendation from the local corrections department or its designee as to the amount of bail the judge should impose, or whether the judge should set bail or bond, conditionally release the defendant, or release the defendant on his/her own recognizance;

the defendant's race; or

the defendant's gender/sex.

- B. As required by Minn. Stat. § 629.74, before approving any pretrial evaluation form or tool, Judicial Council will consult with the Department of Corrections and will consider any DOC input before making a final decision.
- C. The statewide pretrial evaluation form and Minnesota Pretrial Assessment Tool (MNPAT) are approved for use in all counties in Minnesota, and must be used when conducting the pretrial evaluation for certain crimes as required by Minn. Stat. § 629.74. The form must be submitted to the court before the defendant's first appearance.

- D. If a county opts not to use the approved pretrial evaluation form and/or risk-assessment tool, the county must request and obtain approval from the Judicial Council to use an alternative form and/or tool. Requests for approval of an alternative form/tool must be made using the Pretrial Evaluation Form and Tool Approval Request Form. The alternative form/tool must not be used until it is approved by Judicial Council, and once approved, the form/tool must not be modified without Judicial Council approval.
- E. In addition to using an approved form and tool for the crimes required by Minn. Stat. § 629.74, each county should consider expanding use for other defendants who are in custody and scheduled to appear before a judge, weighing the benefits of using the form and tool against the costs and resources available locally to do so.
- F. Courts should not establish, approve, or rely on preset bail schedules, except when setting bail for defendants who have failed to appear on that case. Defendants arrested and detained for offenses on the Statewide Payables List should be released without bail, unless the arrest is based on a warrant for failure to appear on the payable offense. Any district or county that continues to utilize a court-approved preset bail schedule after January 1, 2019 shall provide a copy of a bail schedule to the Judicial Council by January 1, 2019, and a preliminary plan for sunseting the preset bail schedule.
- G. To guard against potential bias, judges must consider the factors included in the approved form and tool, and must not alter the form to supplement it with information that has not been approved. Any other non-scored information or scores such as lethality assessments must be considered separately and not included in the form. The local corrections department or its designee may include recommendations regarding the conditions or pretrial supervision that may be appropriate for the defendant if the court orders conditional release.
- H. The MNPAT and any other approved tool, upon implementation and after any approved change, must be validated as soon as practicable and regularly based on a process and schedule established by the State Court Administrator's Office (SCAO). At a minimum, validation studies must be done every 5-7 years and meet minimum requirements set forth by SCAO. These minimum requirements include, but are not limited to, utilizing appropriate advanced statistical analysis techniques, bias testing, and incorporating only data-driven results in the final risk assessment tool.
- I. SCAO shall provide training on the use of the approved pretrial release form and risk-assessment tool to all new judges and provide regular training for sitting judges. SCAO shall also coordinate with external stakeholders who are responsible for training their own staff.

- J. All chief judges shall coordinate with stakeholders for local implementation and training, and should consider establishing or using existing local councils for ongoing discussion and training.

V. IMPLEMENTATION AUTHORITY

Implementation of this policy is the responsibility of the State Court Administrator, acting as the Judicial Council’s agent, and the Chief Judges of the Judicial Districts.

VI. EXECUTIVE LIMITATIONS

None.

VII. RELATED DOCUMENTS

Pretrial Evaluation Form and Tool Approval Request Form