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Policy Directive
San Francisco District Attorney's Office
Pretrial Detention and Release Conditions

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I. INTRODUCTION

Money bail is discriminatory and undermines public safety. It is the policy of the District Attorney's Office to never seek money bail at arraignment. It is the District Attorney's policy to seek pretrial detention, consistent with the California Constitution, to protect public safety and to reasonably ensure the defendant's return to court. Pretrial detention shall be the last option, only after all release conditions have been considered and determined to be inadequate to protect public safety or to reasonably ensure the defendant's return to court. Public safety and the safety of the victim shall be the primary considerations. To the extent any defendant is currently incarcerated solely because of an inability to pay money bail, this Office will not object to a new custody status hearing where this policy shall apply. To the extent that the Court continues to detain people using money bail, this Office will object in court and decline to defend against any writ filed by the defense.

II. PRETRIAL RELEASE CONDITIONS

- A. The Assistant District Attorney (ADA) charging the case shall determine whether pretrial release conditions will adequately protect public safety and reasonably ensure the defendant's return to court.
- B. The charging ADA shall seek and consider all available information including but not limited to incident reports and investigation chronologies, the PSA risk assessment, and all available information about a defendant.
 1. The ADA shall seek and consider the wishes of the victim consistent with the Victim's Bill of Rights under Marsy's Law as outlined by the California Constitution.
 2. All sources of information shall be considered to make the most informed decision possible within the timeframe allotted by law.
- C. Pretrial release conditions, if any, shall be considered in order from least restrictive (No Conditions) to most restrictive (Electronic Monitoring / Home Detention). Release with no

condition shall be the initial position. The least restrictive condition or combination of conditions for release must be determined to be inadequate to protect public safety and to reasonably ensure the defendant's return to court before considering the next least restrictive condition. Examples of pretrial release conditions in tiers of ascending order from least to most restrictive is appended to this policy. (See Table 1.)

- D. All pretrial release conditions requested shall be reasonably related to the charges, and necessary to protect the public and to reasonably ensure the defendant's return to court.
- E. Only after all pretrial release conditions have been thoroughly evaluated and determined to be inadequate to protect public safety and to reasonably ensure the defendant's return to court shall pretrial detention be considered.

III. PRETRIAL DETENTION PROCEDURES

- A. The Assistant District Attorney (ADA) charging the case shall determine whether to seek pretrial detention. The charging ADA shall obtain the approval of a Division Chief or the District Attorney and document in the file whether the request for pretrial detention was approved or denied with the reasons.
- B. Absent other open cases, warrants, en routes, Parole, Probation, Post Release Community Supervision (PRCS) or Mandatory Supervision (MS), or other legal encumbrances, pretrial detention shall only be considered at arraignment in:
 - 1. Felony offenses involving acts of violence on another person; or
 - 2. Felony offenses where the defendant has threatened another with great bodily harm; or
 - 3. Felony sexual assault offenses on another person.
- C. Pretrial detention shall only be considered when the facts are evident and clear and convincing evidence shows a substantial likelihood that the defendant's release would result in great bodily harm to others or the defendant's flight.
 - 1. The substantial likelihood of defendant's flight may include felony holds from other jurisdictions. Release conditions or detention may be considered for the limited purpose of ensuring the defendant is not removed to another jurisdiction. Considerations shall include but are not limited to a comparison of the seriousness of the charges locally and for the hold, the uncertainty of when the defendant will be returned, and maintaining joinder of co-defendants.
- D. If approved to seek detention, the charging ADA shall prepare and file a Motion to Detain the defendant supplying supporting evidence and legal authority to the court.

IV. COURT

- A. The ADA at arraignment shall recommend release conditions as appropriate based on the policy and all available information, including any recommendations from the charging ADA.
- B. The initial pretrial detention determination shall only be reconsidered upon new information or changed circumstances not known at the time the initial determination was made.
 - 1. If the new information or changed circumstances supports seeking detention not previously sought, the ADA shall consult with a Managing Attorney and seek approval from either a Division Chief or the District Attorney.
 - 2. New information or changed circumstances may also support releasing the defendant or changing the level of recommended pretrial condition(s).
 - i. After an initial determination to seek detention, the decision to agree to release shall be made with the approval of a Managing Attorney.
 - ii. The decision to change the level of pretrial condition(s) shall be made at the discretion of the ADA.
- C. If requested by the victim, the ADA in court shall provide the victim with the opportunity to be heard on the post-arrest release decision.
- D. The ADA in court shall state the District Attorney's position documented in the casefile along with a summary of the reasons on the record at the time the court is considering detention or release.

V. DATA COLLECTION

All ADAs shall assist with the District Attorney's Office's procedures to collect data related to pretrial detention and release conditions. The data will be analyzed to evaluate the effectiveness of this policy for protecting public safety including a defendant's ability to maintain employment, remain in school or treatment, and contribute to their family's needs, and to ensure that the policy is applied consistently.

VI. EXCEPTIONS

In the event extraordinary circumstances present unusual risks of harm to public safety or victims, an ADA at any stage of the proceedings may deviate from the policies enumerated here with the approval of a Division Chief or the District Attorney.

Table 1.
PRETRIAL RELEASE CONDITIONS

LEAST Restrictive Conditions	<ul style="list-style-type: none"> • Own Recognizance Release – No Active Supervision (OR-NAS) <ul style="list-style-type: none"> ○ Court date reminders • Travel restrictions – order to not leave the state, surrender passport • Driving prohibitions or restrictions • Order to abstain from alcohol or other substances • Stay away order • Other
MEDIUM Restrictive Conditions	<ul style="list-style-type: none"> • Own Recognizance Release – Minimum Supervision (OR-MIN/S) <ul style="list-style-type: none"> ○ Court date reminders ○ Phone reporting • Maintain employment, maintain or commence educational program • No weapons condition • Order to surrender weapon(s) to law enforcement • Search condition • Other
MOST Restrictive Conditions	<ul style="list-style-type: none"> • Own Recognizance Release – Assertive Case Management (OR-ACM) <ul style="list-style-type: none"> ○ Court date reminders ○ Phone and in person reporting ○ Out of custody assessments • Electronic monitoring (EM-GPS) • Secure Continuous Remote Alcohol Monitoring (SCRAM) • Home detention (HD) • Home relocation • Mental health treatment • Alcohol abuse treatment • Substance abuse treatment • Drug and alcohol testing • Residential treatment program • Other