



# Chapter 8

## Pre-trial Services

# Bail Evaluation and Pre-trial Release in Domestic Violence–Related Cases

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## Framework

Pretrial Services interviews all defendants booked into the jail to determine who is eligible for release to the community pending resolution of the case. The pretrial release evaluation provides due process to those accused of crimes with the goals of securing defendants for trial while protecting the victim, witnesses and the community from harm. In domestic violence cases, a judge determines whether the defendant’s release poses a threat to the victim, the victim’s family, or the public. The judge must also consider whether the defendant constitutes a flight risk, or is unlikely to appear for trial.<sup>1</sup>

An equally important part of determining the appropriate amount and conditions of bail is the history of violence, the severity of this offense and the risk posed to the victim and public of continued violence by the defendant.<sup>2</sup> Once those factors are assessed, the judge imposes conditions of release or bail, or both. The pretrial officer’s role is to gather information that provides the judge with a foundation for this important series of decisions. The Blueprint approach envisions a bail hearing where the pattern of abuse is made visible and appropriately considered in the determination of a suspect’s likelihood to reoffend. If it is high, conditions and monitoring should reflect that.

Pre-trial release decisions balance the constitutional presumption of innocence of the defendant; victim safety, which may require restricting the defendant’s behavior; and steps that will assure the defendant’s appearance at trial. The court has several non-financial options:

- (1) Release on recognizance (ROR), which requires only the defendant’s signature, a promise to appear in court as scheduled, and abiding by any conditions imposed by the court;
- (2) Unsecured release, which requires that the defendant sign, promise to appear and abide by any conditions imposed by the court;<sup>3</sup> and
- (3) Third-party surety release, which requires a third party to sign with the defendant.<sup>4</sup>

The court also has several financial options:

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<sup>1</sup> KY. REV. STAT. ANN. § 431.066.

<sup>2</sup> Amount of bail shall be commensurate with the nature of the offense charged, and considerate of past criminal acts and reasonably anticipated conduct of the defendant if released. KY. REV. STAT. ANN. § 431.525.

<sup>3</sup> There is an uncollected money amount attached to this type of release and a defendant’s failure to appear in court, or a defendant’s failure to abide by conditions imposed, could lead to a forfeiture that the defendant would be required to pay. *Interview Process and Release Alternatives*, Kentucky Court of Justice, <https://courts.ky.gov/courtprograms/pretrialservices/Pages/interviewrelease.aspx>.

- (1) Cash - full cash amount to be posted plus fees;<sup>5</sup>
- (2) Property - Kentucky property owners are to have equity in their property equal to twice the face amount of the bail in order to qualify;<sup>6</sup>
- (3) Partially secured - a percentage of the cash amount set as bail (usually 10%, but can vary);<sup>7</sup> and
- (4) Administrative release, where a defendant meeting specific criteria by Supreme Court Order may be released without a judge or judicial officer being contacted.<sup>8</sup>

In domestic violence cases involving battering - an ongoing pattern of abuse - releases without bail or releases on recognizance without conditions should be extremely rare.

Kentucky Pretrial Services operates under the premise, supported by federal and state constitutions, that defendants are entitled to the least restrictive release terms possible, depending on whether they are likely to appear in court and whether they present a risk to public safety. Per court rule, pretrial officers are mandated to conduct an interview and investigation of all persons arrested on bailable offenses within 24 hours of his or her arrest. The interviews and investigations are voluntary and confidential, and conducted in person at the detention center. As a part of the interview and investigation process, officers also screen defendants for alcohol, drug abuse, and mental health issues. Pretrial officers verify

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<sup>4</sup> The party signing will usually be required to own property but a lien will not necessarily be placed on the property. These types of bail releases are subject to approval on a local basis. If the defendant does not show up for court appearances or does not abide by conditions that may be imposed by the Court, the third-party surety may be subject to forfeiture by the Court. The amount of the forfeiture would be the amount set as bail. *Interview Process and Release Alternatives*, Kentucky Court of Justice, <https://courts.ky.gov/courtprograms/pretrialservices/Pages/interviewrelease.aspx>.

<sup>5</sup> If a person posts this type of release on behalf of a defendant, and the defendant does not show up for court appearances or does not abide by conditions that may be imposed by the Court, the bail will be subject to forfeiture by the Court. If no violations of the conditions occur, then the full amount will be refunded to the person who posted it upon disposition of the case. *Interview Process and Release Alternatives*, Kentucky Court of Justice, <https://courts.ky.gov/courtprograms/pretrialservices/Pages/interviewrelease.aspx>.

<sup>6</sup> A lien will be placed on this property to secure the bail. If the defendant does not show up for court appearances or does not abide by conditions that may be imposed by the Court, the value of the posted property will be subject to forfeiture by the Court. There are also fees for processing this type of bond. The lien on the property will be released upon disposition of the case. *Interview Process and Release Alternatives*, Kentucky Court of Justice, <https://courts.ky.gov/courtprograms/pretrialservices/Pages/interviewrelease.aspx>.

<sup>7</sup> There is a 10% processing fee for this type of bail; once the case is disposed, the remaining 90% of the posted bail will be refunded. If the defendant does not show up for court appearances or does not abide by conditions that may be imposed by the Court, the full amount of the set bail may be required as forfeiture by the Court. *Interview Process and Release Alternatives*, Kentucky Court of Justice, <https://courts.ky.gov/courtprograms/pretrialservices/Pages/interviewrelease.aspx>.

<sup>8</sup> This option was not available in all counties but will be in place throughout the Commonwealth by January 1, 2017. Check with your local Pretrial Office to see if your county is participating. *Interview Process and Release Alternatives*, Kentucky Court of Justice, <https://courts.ky.gov/courtprograms/pretrialservices/Pages/interviewrelease.aspx>.

information provided by the defendant during the interview, conduct a criminal history check, and use a validated risk assessment that measures flight risk and anticipated criminal conduct.<sup>9</sup>

The assessment looks into previous failures to appear in court, the nature of the current charges, and past criminal history. In domestic violence cases, the pretrial release officer also reviews any information documented by law enforcement officers about risk this particular defendant poses to this victim. For example, an officer asking questions about risk and documenting the answers could provide pretrial release officers with information about the history of abuse and violence in the relationship, whether the victim is afraid and of what, and whether the victim is seeking a no-contact order and why or why not. Establishing risk requires using all available sources of information to gather as much detail as possible about the history, context, and severity of violence in the relationship. In addition to the above, the pretrial officer also uses databases of criminal history information and orders for protection affidavits.

Pre-trial release decisions balance the constitutional presumption of innocence of the defendant; victim safety, which may require restricting the defendant's behavior; and steps that will assure the defendant's appearance at trial. As set forth above, the court has a number of options.

Once released to the community under conditions imposed by the court, monitoring can help discourage and interrupt the domestic violence offender's efforts to intimidate the victim. Re-offending is common in domestic violence cases. Pretrial officers monitor those ordered to supervision and report compliance issues to the Court.<sup>10</sup> Conditions of release should place controls on the defendant's behavior that will aid in enhancing the safety of the victim and make re-offense less likely. Some defendants should receive more intensive monitoring through frequent and/or in-person reporting. Pre-trial release supervisors should remain alert to indications that the defendant is violating no-contact orders or intimidating the victim and promptly report any violations of conditions of release.

When the defendant engages in behavior that has safety implications for the victim, pre-trial officers should file a violation of release conditions with the court, after which the court will make a finding whether probable cause exists to believe that the conditions of release have been violated.

In sum, keep in mind that given the unique characteristics of domestic violence cases and the prevalence of victim intimidation by the defendant, actions by the defendant that may not seem to directly affect safety may in fact implicate risk to the victim. The conditions of release should place controls on the defendant in regard to enhancing the safety of the victim as well as public safety, making re-offense less likely, and fulfilling obligations to appear in court.

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<sup>9</sup> *Pretrial Reform in Kentucky*, Pretrial Services, Administrative Office of the Courts, Kentucky Court of Justice, 2013. <https://www.pretrial.org/download/infostop/Pretrial%20Reform%20in%20Kentucky%20Implementation%20Guide%202013.pdf>.

<sup>10</sup> *Monitored Conditional Release Program*, Kentucky Court of Justice, <https://courts.ky.gov/courtprograms/pretrialservices/Pages/mcr.aspx>.

The pretrial officer has just hours to complete the tasks included in the following policies and protocols. Carrying them out as designed would be impossible without an interagency approach to cases built on the premise that each practitioner is accountable to the intervention needs of others working on a case. The agency administration has the responsibility to ensure the evaluator has timely access to the proper data bases, information, and people to follow these protocols.

## **POLICY: CONDUCTING BAIL EVALUATIONS AND SUPERVISING PRE-TRIAL RELEASE**

In addition to adhering to general agency policy, pretrial officers will take the following actions in responding to domestic violence–related cases, according to their specific roles and job functions, using the appendices referenced and included as part of this policy.

### **Bail Evaluations**

1. For all domestic violence–related crimes in which a bail evaluation is completed, address the safety needs of the victim and of the community and the likelihood that the defendant will appear in court.
2. Prepare a written bail evaluation that describes the severity and context of the domestic violence and the risk to the victim and the community, as well as the likelihood that the defendant will appear at trial.
3. Present the bail evaluation to the judge during judicial reviews of in-custody defendants, including information about the context and severity of the violence.
4. Work in collaboration with those in direct contact with victims, such as law enforcement officers, cognizant of the principles of continuing engagement.
5. Be attentive to cases in which suspects are also victims of ongoing abuse are who also need protection from further abuse.
6. Attend first appearances to provide bail evaluation to the court, prosecutor, and defense attorney. Answer questions pertinent to the preparation and content of the bail evaluation and to the execution of conditional release as ordered by the judge.

### **Monitored Conditional Release Supervision**

7. Execute conditional releases as ordered by the judge.
8. Monitor all defendants granted conditional release by the court for compliance with the court's conditions.
9. Promptly report all violations of conditional release in a manner appropriate to the alleged violation.
  - a. Assess each violation for its seriousness and its potential impact on the defendant's likelihood for failure to appear or for re-arrest, with particular attention to those violations that pose danger to the victim or the public.
  - b. Respond with the course of action appropriate to the nature of the violation.

**APPENDICES**

The following appendices are attached to and included as part of the bail evaluation and pre-trial release policy:

- *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*

See the Madison County Blueprint for Safety Appendix for appendices referenced in the policy and protocols.