



CONDITIONS WITH CONSEQUENCES: AN ARIZONA STATEWIDE NEEDS ASSESSMENT

Abstract

This needs assessment will examine the need to share court ordered Conditions of Release with other Arizona Justice Partners.

The Arizona Criminal Justice Commission

1110 W Washington St # 230, Phoenix, AZ 85007

This product was supported by cooperative agreement number 2015-NS-BX-K006, awarded by the Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this product are those of the contributors and do not necessarily represent the official position or policies of the U.S. Department of Justice.”

Conditions of Release in Arizona

1 CONTRIBUTORS

The following personnel were instrumental in providing information to the Arizona Criminal Justice Commission about their local and statewide practices.

Heather Bohnet

Arizona Criminal Justice
Commission

Tom O'Connell

Arizona Administrative Office
of the Courts

Deanne Jensen

City of Phoenix Prosecutor's
Office

Honorable Michael Peterson

Graham County Superior Court

Shawn Cox

Maricopa County Attorney's
Office

Joe Rodriguez

Maricopa County Sheriff's
Office

Correina Snyder

Maricopa County Superior
Court

Tony Coulson

NTH Consulting

Malena Acosta

Pima County Attorney's Office

Heather Mosher

Pima County Attorney's Office

Mikki Tilton

Pima County Consolidated
Justice Court

Adelio Abrugena

Pima County Sheriff's Office

Anna Haney

Arizona Criminal Justice
Commission

Kathy Waters

Arizona Administrative Office of
the Courts

Erin Yabu

City of Phoenix Prosecutor's
Office

Lolita Rathburn

Maricopa County Adult
Probation

Julie Williams

Maricopa County Attorney's
Office

Diana Hegyi

Maricopa County Superior Court

Steve Stilwell

Maricopa County Superior Court

Dean Brault

Pima County Office of Court
Appointed Counsel

Shelby Doyle

Pima County Attorney's Office

Laura Penny

Pima County Attorney's Office

Debbie Wade

Pima County Consolidated
Justice Court

Noah Adkins

Pima County Sheriff's Office

Marc Peoples

Arizona Criminal Justice
Commission

Patrick Scott

Arizona Administrative Office of the
Courts

Honorable Wyatt Palmer

Graham County Justice of the Peace
Court

Therese Wagner

Maricopa County Adult
Probation/Pretrial Division

Hilary Weinberg

Maricopa County Attorney's Office

Todd Herrera-Ridenhour

Maricopa County Superior Court

Michael Bellows

Mesa Police Department

Caryn Caramella

Pima County Office of Court
Appointed Counsel

Jodi Karlan

Pima County Attorney's Office

Ralph Garcia

Pima County Consolidated Justice
Court

Steve Soneberg

Pima County Public Defender

A. Patty Reyes

Pima County Sheriff's Office

Conditions of Release in Arizona

Sean Stewart

Pima County Sheriff's Office

Domingo Corona

Pima County Superior Court

James Giacomino

Pima County Superior Court

Michelle Madrid

Pima County Superior Court

Michelle Moore

Pima County Superior Court

Ron Overholt

Pima County Superior Court

Dianne VanHorn

Pima County Superior Court

Darla Wandell

Pima County Superior Court

Krisanne LoGalbo

Pima County Superior Court

Honorable Arthur Markham

Prescott Justice Court

Tina Sommerville

Tucson City Attorney

Jennifer Stash

Tucson City Attorney

Honorable Wendy Million

Tucson Municipal Court

Dina Young

Tucson City Attorney

Eric Johnson

Tucson Police Department

Aaron Gorrell

Waterhole Justice Consulting

Heather Cole

Yavapai County

Seretha Hopper

Yavapai County

Brandi Low

Yavapai County

Jennifer Manera

Yavapai County

Deanne Petty

Yavapai County

Penny Cramer

Yavapai County Attorney's Office

Christine Hardin

Yavapai County Attorney's Office

Julio Marroquin

Yavapai County Attorney's Office

Kristy Matheson-Parks

Yavapai County Attorney's Office

Jacque Barnes

Yavapai County Attorney's Office

Dennis McGrane

Yavapai County Attorney's Office

Sheila Polk

Yavapai County Attorney's Office

John Napper

Yavapai County Public Defender's Office

Carmella Leyva

Yavapai County Sheriff's Office

Brian Silvernale

Yavapai County Sheriff's Office

Scott Mascher

Yavapai County Sheriff's Office

David Rhodes

Yavapai County Sheriff's Office

Jennifer Jamarillo

Yavapai County Superior Court

Michael Bluff

Yavapai County Superior Court

Honorable David Mackey

Yavapai County Superior Court

Donna McQuality

Yavapai County Superior Court

Tammy Stanford

Yavapai Superior Court

John Morris

Yavapai County Adult Probation Department

Conditions of Release in Arizona

Cindy Robinson

Yavapai County Adult
Probation Department

Conditions of Release in Arizona

2 TABLE OF CONTENTS

1	Contributors.....	1
2	Table of Contents.....	4
3	Purpose Statement.....	6
4	Executive Summary.....	6
5	Project Background.....	7
5.1	Timeline.....	10
6	Stakeholder Assessment.....	11
7	Current “As-Is” Business Process.....	12
7.1	Business Process Model.....	12
7.1.1	Capture Defendant Fingerprint (Booking Agency).....	13
7.1.2	Update Jail Management System (Booking Agency).....	13
7.1.3	Identify Recent Bookings (Pretrial Services).....	14
7.1.4	Research Criminal Background (Pretrial Services).....	14
7.1.5	Complete Pretrial Assessment (Pretrial Services).....	15
7.1.6	Create Initial Appearance Packet (Pretrial Services).....	16
7.1.7	Initial Appearance (Court).....	16
7.1.8	Complete Release Order (Court).....	17
7.1.9	Sign Release Order (Court/Booking Facility).....	17
7.1.10	Share Release Order (Court).....	18
7.1.11	Case Bindover (Court).....	18
7.1.12	Supervision and Monitoring (Pretrial Services).....	19
7.1.13	Release Order Modification.....	20
7.1.14	Case Adjudication.....	21
8	Impedements to Sharing.....	21
8.1	Manual, Paper-Based Process.....	21

Conditions of Release in Arizona

8.2	Inconsistent Release Orders.....	22
8.3	Verification of Defendant Identity	23
8.4	Conflicting Conditions of Release.....	24
8.5	Enforcement Mechanisms	24
8.6	Defendant Signature	25
9	Conclusions.....	25
10	Glossary of Acronyms	28
11	Works Cited	29

3 PURPOSE STATEMENT

The primary purpose of this needs assessment is to identify high-level impediments to sharing pretrial conditions of release as they relate to firearms with the FBI National Instant Criminal Background Check System (NICS). The needs assessment will also identify interest and support among the Arizona criminal justice community to share all conditions of release with other Arizona criminal justice stakeholders.

4 EXECUTIVE SUMMARY

More than 100,000 initial appearance hearings occur annually across Arizona¹. During these hearings, the judicial officer will make a finding as to whether the defendant poses a risk to the community. Based on the level of risk, the Release Order can require a financial bond, indicate release to a third party, or indicate supervised/unsupervised release with additional pretrial conditions. These conditions of release can range widely from prohibition against possession of deadly weapons, to requiring no-contact with the victim, to ongoing electronic monitoring, and, of course, that the defendant not violate additional criminal statutes.

But how do we ensure that the defendant does not violate the terms of their release? Currently, there is little in the way of an integrated monitoring or enforcement process to ensure the safety and well-being of law enforcement, the general community, as well as any specific individuals – victims, witnesses, etc. -- who are also protected by this judicial process.

This report, devised with the cooperation of professionals from local and state agencies across Arizona, provides a needs assessment to examine how conditions of release are currently processed. The report will also highlight how the conditions of release process may be improved through technology and simplified business processes.

¹ Arizona law stipulates that an initial appearance hearing must occur within 24 hours of arrest.

Conditions of Release in Arizona

Over a period of nine months, from February to October 2016, the Arizona Criminal Justice Commission (ACJC) conducted a series of 20 in person and telephonic meetings with local stakeholders that focused on the policies and the procedures of creating, enforcing and terminating conditions of release in felony and misdemeanor criminal court cases. After assessing the data gathered from these discussions, the ACJC made three key observations:

- Successful enforcement of conditions of release is dependent on law enforcement and other justice personnel having timely and accurate information for conditions of release issued by any court in Arizona;
- There is no automated mechanism to electronically share current information on conditions of release among justice partner organizations;
- For these reasons, and with few exceptions, compliance to conditions of release are not actively monitored and enforced.

Through the needs assessment, the ACJC reviewed current business processes, identified challenges to these business process, and explored potential options for automating the electronic sharing of information to support ongoing monitoring and enforcement of pretrial conditions of release.

5 PROJECT BACKGROUND

Nationally, and in the State of Arizona, pretrial release supervision has become a topic of significant controversy, discussion and more recently, reform. Proponents of reform cite several studies that demonstrate the undue impact detention can have on a defendant unable to post bond such as loss of job, loss of housing and the loss of ability to care for their families (Berry, 2011). Moreover, studies have also shown a direct correlation between the length of detention and

Conditions of Release in Arizona

likelihood of rearrest (Foundation, 2013). This finding was recently confirmed in a Maricopa County study that again found the direct correlation between the length of pretrial detention and the likelihood of pretrial misconduct (Maricopa County Justice System Planning and Information, 2016).

The 2016 Arizona Task Force on Fair Justice for All recommended expanding the use of public safety risk assessments to limited jurisdiction courts for use in felony and high level or select misdemeanor cases, including cases involving defendants entitled to counsel or those with a potential for a jail sentence (Supreme Court of Arizona, 2016). The Task Force reached this conclusion based on reviewing studies that describe the hidden costs of pretrial detention. In addition to increased rates of recidivism, this research also documented a clear link between the length of pretrial detention and the deleterious impact to a defendant's ability to keep their job, find housing and support their family.

In addition to these hidden costs, there is a clear budgetary impact resulting from pretrial detention. Combined, Maricopa County and Pima County spend more than \$256 million annually on detention operations (Maricopa County, AZ, 2016) (Pima County, AZ, 2016). Considering that 75% of the detainees at the Maricopa County Detention Center (Maricopa County Criminal Justice System, 2016) and 80% of the Pima County Detention Center (Pima County Arizona, 2016) populations are pretrial, the ACJC estimates that over \$195 million is spent just in those two counties on pretrial detention.

In many ways, Arizona leads the way with the implementation of the Conference of State Court Administrators (COSCA) recommendation advocating "the presumptive use of 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." (Conference of State Court Administrators, 2013) As Arizona Courts shift from a "culture of detention" to a "culture of

Conditions of Release in Arizona

release,” it will become increasingly important to develop systems that ensure both the safety of the community and law enforcement officers. In fact, based on a study done in Philadelphia, the long-term success of the program may, in part, be *dependent* on the ability to enforce these non-financial conditions.

In the mid-1990s, the Philadelphia Justice System implemented several early release programs to address problems of severe jail overcrowding. This triggered a review of the city’s release programs, including the mechanisms to deliver consequences and strengthen accountability in the pretrial process. During this study, researchers discovered that the threat of deterrent sanctions, implicit in Release Orders, could not be enforced:

Court officials characterized the situation in Philadelphia relating to the performance of pretrial release at the time of the study as one governed by a culture of no consequences ... They discovered that the threat of deterrent sanction implicit in the judicial pretrial release orders could not be enforced. There was simply, as one judge phrased it, no “hammer” (option to use jail) to enforce compliant behavior (Goldkamp, 2006).

In other words, once the “Street” realized that there were no consequences for pretrial misconduct, the beneficial impact of conditions of release was negated.

Conditions of Release in Arizona

5.1 TIMELINE

The Arizona National Instant Criminal Background Check System (NICS) Task Force is an ACJC sponsored, multi-disciplinary workgroup that meets quarterly to review policy, business process and technology related to implementing reporting into the Federal Bureau of Investigation (FBI) NICS System. Over the past several years, the Task Force and the ACJC Commissioners have successfully facilitated the implementation of new legislation, policies, businesses processes and technology to support comprehensive background checks through improved criminal history records, sharing mental health adjudication information and expanding the visibility of arrest warrant information accessible through the NICS System.

Over the past 18 months, the ACJC has studied pretrial conditions of release, especially as they pertain to the prohibition against the possession of deadly weapons.

- **April 2015**, the ACJC NICS Task Force voted to recommended that the ACJC conduct a needs assessment to explore how conditions of release that prohibit possession of firearms might be shared with the FBI NICS System.
- **July 2015**, ACJC Commissioners voted to approve sharing of case information with NICS where the judicial officer has ordered a prohibition against possession of firearms.
- **October 2015**, the ACJC received funding from the Bureau of Justice Statistics (BJS) NICS Act Record Improvement Program to develop a needs assessment focused on how conditions are created, updated, and monitored throughout the lifecycle of a criminal case in Arizona.

Conditions of Release in Arizona

- **February 2016**, the ACJC begins a series of on-site stakeholder focus group meetings throughout Arizona to better understand the importance of sharing conditions of release and to identify potential implementation challenges.

6 STAKEHOLDER ASSESSMENT

Focus group participants included stakeholders from four Arizona counties² and two statewide agencies³. During these focus group meetings, Subject Matter Experts (SMEs) discussed how conditions of release are used in practice across misdemeanor and felony criminal case types in their local municipal courts, justice of the peace courts, and superior courts. SME disciplines included pretrial court services, [REDACTED] prosecution, defense counsel, court administration, court clerks, [REDACTED] judicial officers, law enforcement officers, detention officers, victim advocates, and technologists. During 20 focus group sessions, participants broadly agreed to the following conclusions:

TO FACILITATE ELECTRONIC SHARING OF
CONDITIONS OF RELEASE, POLICIES AND SYSTEMS
WILL NEED TO BE DEVELOPED

- There is **unanimous agreement** that conditions of release that either prohibit the possession of a deadly weapon or prohibit contact with a victim (i.e., no contact order) should be shared with the NICS and authorized Arizona criminal justice partners;
- Over **90% of participants agree** that all conditions of release should be electronically shared with authorized Arizona criminal justice partners;

² Maricopa, Pima, Graham, and Yavapai Counties

³ Statewide organizations include Administrative Office of the Courts and the Department of Public Safety

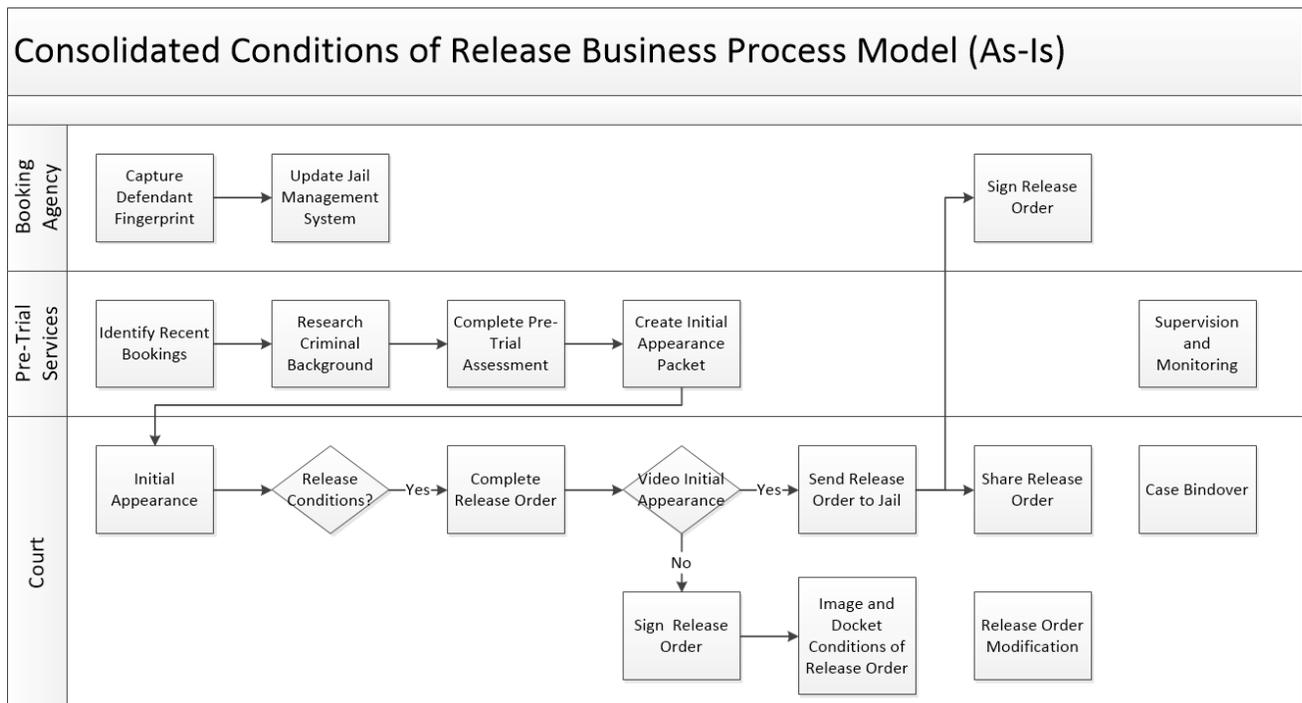
Conditions of Release in Arizona

- To facilitate electronic sharing of conditions of release, **policies and systems will need to be developed** to ensure that authorized personnel have timely and accurate access to current conditions of release information.

7 CURRENT “AS-IS” BUSINESS PROCESS

One of the most effective ways to uncover policy or business process issues, identify potential implementation challenges, and discover innovative local programs is to build comprehension by deconstructing the current business processes. The business process model presented below offers a unified description of the procedures used in the four counties involved in the focus group meetings. Case studies describing innovative local programs are described throughout.

7.1 BUSINESS PROCESS MODEL



Conditions of Release in Arizona

7.1.1 CAPTURE DEFENDANT FINGERPRINT (BOOKING AGENCY)

The arresting agency is typically required to complete a booking sheet when transporting a defendant to the jail for detention. The booking agency, which will be the jail in most cases, will capture the defendant demographics and charging information, and transmit those into the Department of Public Safety (DPS) Arizona Computerized Criminal History (ACCH) Repository with a Type One Fingerprint (“Type 01”) captured through a MorphoLivescan booking station. In many jurisdictions, agencies will store the booking information locally until it can be reviewed and verified. The agency will then transmit this criminal history arrest record to the DPS⁴. If the defendant has prior Arizona criminal history, then once the fingerprints are checked, the DPS Automated Fingerprint Identification System (AFIS) will return the biometrically verified State Identification Number (SID) along with the defendant AFIS name and date of birth. If this is the first Arizona criminal history entry for a defendant, then AFIS will generate a new SID and return that number to the agency. Depending on a number of factors including the local use of “Queue and Review” and whether the AFIS system is operating in a ‘lights-out’ configuration⁵, return of the SID and biometrically verified identity information can take several hours to several days.

7.1.2 UPDATE JAIL MANAGEMENT SYSTEM (BOOKING AGENCY)

Booking sheet information is either transmitted or manually entered into the Jail Management System (JMS). In some jurisdictions, the JMS and LiveScan station are integrated so that demographic and charging information is shared automatically.

⁴ This ‘Queue and Review’ process can add up to three days to the booking process in departments where the Quality Assurance unit operates only during regular business hours.

⁵ Refers to the ability of the system to operate without human intervention.

Conditions of Release in Arizona

7.1.3 IDENTIFY RECENT BOOKINGS (PRETRIAL SERVICES)

A pretrial services organization exists in every Arizona County. In most counties, the pretrial services organization is a division within the adult probation department. For instance, pretrial court services in Pima County reports directly to the Superior Court.

Three to four hours prior to the initial appearance hearing, pretrial court services will identify newly booked criminal defendants that remain in custody⁶. While some jurisdictions have implemented electronic data feeds that automatically notify pretrial services personnel of recently arrested defendants, most Arizona Counties will either directly access the JMS to identify these recent bookings or retrieve paper copies of the booking sheet. Personnel extract the booking name of the defendant, their date of birth, and other personally identifiable information such as the social security number. It is important to note that this *booking information* is often self-reported by the defendant and is what was captured when they were booked into the facility. At this point in the process, the identity information may not be biometrically verified.

7.1.4 RESEARCH CRIMINAL BACKGROUND (PRETRIAL SERVICES)

Utilizing this *booking information*, pretrial service personnel utilize a variety of resources to develop a more comprehensive understanding of the defendant's prior involvement in the criminal justice system. Personnel will typically query the Arizona Criminal Justice Information System (ACJIS) to retrieve active warrants, protection orders and criminal history. Some counties have access to the Justice Web Interface (JWI) which queries these multiple systems through a single form. Additionally, personnel will often query the Administrative Office of the Courts (AOC) Public Access System to retrieve court case history and to discover any other outstanding

⁶ Defendants that have been booked on an arrest warrant that specifies bond requirements may be released after booking if they meet those requirements.

Conditions of Release in Arizona

court orders. Not all Arizona criminal courts provide case information to the Public Access System.

7.1.5 COMPLETE PRETRIAL ASSESSMENT (PRETRIAL SERVICES)

The Superior Courts in all Arizona Counties use the Laura and John Arnold Foundation Public Safety Assessment (PSA). In 13 of 15 Arizona Counties, the PSA is completed through the statewide Adult Probation Enterprise Tracking System known as APETS. Pima County uses a



THE PURPOSE OF THE LAURA AND JOHN ARNOLD
FOUNDATION PUBLIC SAFETY ASSESSMENT
(PSA) IS TO EVALUATE AND DETERMINE THE
LEVEL OF RISK TO THE COMMUNITY

local system referred to as the Pima Information Management Application (PIMA) to create the PSA and Maricopa County uses their Integrated Court Information System to create the PSA.

The purpose of the PSA is to evaluate nine standard factors to evaluate and determine the level of risk to the community in terms of the defendant's likelihood of committing a new crime, committing a new violent crime, and the likelihood they will return for their next court hearing. In addition to the standard PSA factors, several local jurisdictions including Maricopa and Pima County have added local factors to further evaluate risk to the community. Based on the information entered, the PSA will return a relative assessment score indicating whether the defendant is considered a high, medium or low risk of reoffending during their pretrial release. That PSA score is provided to the initial appearance hearing judicial officer and will be factored into their release decision.

CASE STUDY

In the Maricopa County Superior Court, pretrial services personnel create a draft Release Order through their eRelease system. This system allows them to select applicable conditions of release based on the risk assessment. The judicial officer maintains final authority over the Release Order and will assign conditions based on their assessment of the least restrictive conditions necessary to release the defendant back into the community. Pre-populating the Release Order allows the judicial officer to minimize the amount of time necessary to complete the Order while ensuring that their direction is captured accurately. During on-site workshops, judicial officers agreed that this would be an important capability for any statewide system.

7.1.6 CREATE INITIAL APPEARANCE PACKET (PRETRIAL SERVICES)

Information from pretrial services, prosecutors, and other case parties is assembled into a packet and in some counties, will be distributed between all other case parties. In addition to the pretrial assessment, some courts permit the submission of a lethality assessment for domestic violence cases. Lethality assessment tools evaluate additional risk factors to indicate whether the victim is in danger from future violence and may be considered by the judicial officer as part of their release decision.

7.1.7 INITIAL APPEARANCE (COURT)

The initial appearance hearing must occur within 24 hours of the defendant being taken into custody. Based on local case volume, superior courts will schedule these hearings at different frequencies. For example, the Maricopa County Superior Court initial appearance hearing schedule runs around the clock. Other locations such as Yavapai and Graham County only hold an initial appearance hearing once per day. The location of the hearing also varies depending on the facilities available at the jail. In Maricopa County, the judicial officer will hold the initial appearance hearing within the jail facility. In other counties, the defendant will remain

Conditions of Release in Arizona

in custody at the jail and is connected to the judicial officer through a video conferencing system.

7.1.8 COMPLETE RELEASE ORDER (COURT)

During the initial appearance hearing, the judicial officer will review reports from pretrial services and other case parties and make a final determination regarding the custody status of the defendant. If the defendant is to be released, they will specify the conditions for that release.

In most courts, the Release Order is a checkbox form that will indicate a release type which can range from supervised, unsupervised or monitored release and include both standard conditions such as “the defendant shall not leave the state” to special conditions such as “no contact with the victim” and can include ongoing alcohol or drug testing. Conditions of “no contact” will require that the court indicate specifics about the no-contact party or location. Although the AOC has developed a standardized “Form 6: Release Order”, most courts have created their own custom Release Order.

If the background check and/or the lethality assessment indicate high risk factors or if the original incident involved the use or threatened use of a weapon, the judicial officer may add a condition to specifically prohibit the possession of deadly weapons. Typically, this condition will not only require that the defendant surrender all weapons and ammunition to their local law enforcement agency, but also will prohibit them from possessing firearms for the duration of their court case.

7.1.9 SIGN RELEASE ORDER (COURT/BOOKING FACILITY)

Following the initial appearance hearing, the defendant will receive a copy of the Release Order and is required to sign the order indicating that they have been informed of the terms of their

Conditions of Release in Arizona

release. If the hearing was done in person, the defendant will sign the Order before the judicial officer, possibly using an electronic signature pad. In counties using video-based initial appearance hearings, the Order will be printed and faxed to the jail and the defendant will be required to sign the Order before they can be released. During the on-site workshops, it was discovered that some counties do not have a formal process to ensure that the court properly accounts for and records the signed copy of the order.

7.1.10 SHARE RELEASE ORDER (COURT)

Copies of the Release Order are often shared via email with the jail, pretrial release, and other case parties for inclusion in their own case files. None of the jurisdictions involved in the site visits currently share Release Order information directly with other justice partners through an electronic data exchange.

7.1.11 CASE BINDOVER (COURT)

In many Arizona counties, the initial appearance hearing will occur in a limited jurisdiction court. Once the defendant is formally indicted by a grand jury, the case will be “bound over” to the county superior court. Although conditions of release ordered in the limited jurisdiction court are maintained, if the case is bound over, a new superior court case with a new case number will be created.

CASE STUDY

The Tucson City Court has implemented an innovative program with the Tucson Police Department in situations where there is a prohibition against firearms. The Tucson Police Department will receive a copy of the Release Order and then will monitor the case to ensure compliance by the defendant. After several days, if the defendant has not turned in their firearms, the police department will visit them and remind them of the compliance requirement.

Conditions of Release in Arizona

7.1.12 SUPERVISION AND MONITORING (PRETRIAL SERVICES)

Due to extensive personnel shortages in most jurisdictions, there is limited ongoing monitoring of defendants on unsupervised release to ensure compliance. Monitoring typically only

DURING THE FIRST SIX MONTHS OF 2016, MESA POLICE DEPARTMENT DETECTIVES ARRESTED AND CHARGED APPROXIMATELY 10% OF MONITORED DEFENDANTS WITH VIOLATION OF THE CONDITIONS OF THEIR RELEASE.

occurs when law enforcement responds to an incident and only if the responding officer is made aware that the defendant is on pretrial release with conditions.

Several jurisdictions have implemented pilot projects to facilitate ongoing monitoring of released defendants. For example, the Glendale and Mesa Police Departments in conjunction with the Maricopa County Attorney's Office (MCAO) has developed the Domestic Violence Compliance Check Program. The goals of this program are to:

- Improve victim safety for victims at greatest risk;
- Improve access to victim services;
- Reduce recidivism of most violent offenders;
- Reduce impact on public safety resources; and
- Increase officer safety.

Domestic Violence Detectives may conduct a lethality assessment on domestic violence cases to determine if a compliance check is warranted. If compliance checks are necessary, they will contact the MCAO and request current conditions of release from the defendant's case. MCAO personnel will retrieve the Release Order from the court case management system and email them to the Detective. Within the agency Records Management System, the Detective will flag the defendant as being on pretrial release with conditions. This improves officer safety by

Conditions of Release in Arizona

ensuring that officers interacting with the defendant will be aware of their current pretrial status and their conditions. These flags are removed after the first court hearing.

If the defendant is later found to be in violation of a condition of their release, they may be arrested and charged with interfering with judicial proceedings (ARS 13 – 2810), which is a Class I Misdemeanor. These charges will be filed into the court by the city attorney. During the first six months of 2016, Mesa Police Department detectives arrested and charged approximately 10% of monitored defendants. They indicated that the program has had a significantly positive impact on Release Order compliance and officer safety.

7.1.13 RELEASE ORDER MODIFICATION

There are several reasons why conditions of release might be modified after the initial appearance hearing. These include:

- If the prosecutor files amended charges;
- If the court orders a new bond review;
- If the defendant was found to be in violation of the previous Release Order;
- If the defense attorney files and is granted a motion to modify. This is the most common situation and will occur in exigent situations such as where the defendant lives out of the state or in cases where conditions may conflict with other court orders.

Modifications are most common during the first two weeks after the initial appearance hearing. In most courts, the changes are documented through a minute entry rather than the reissuance of an updated Release Order.

7.1.14 CASE ADJUDICATION

Conditions of release are no longer binding once the case is been fully adjudicated and are removed after the defendant has been sentenced.

8 IMPEDEMENTS TO SHARING

During our analysis, six potential impediments to sharing conditions of release were identified:

- The current process is labor intensive and depends almost entirely on paper;
- Widely inconsistent Release Order formats;
- Questionable defendant identity;
- Conflicting conditions of release;
- Unclear mechanisms of enforcement; and
- Inconsistent archiving of the defendant signed Release Order.

Addressing these issues will likely require modifications to policy and possibly necessitate the creation of new court rules and/or legislation.

8.1 MANUAL, PAPER-BASED PROCESS

The existing 15 step process that is mostly paper-driven, allows for human error, loss of paperwork, and delays and thwarts effective communication. With the singular exception of the Maricopa County

THE EXISTING 15 STEP PROCESS THAT IS MOSTLY PAPER-DRIVEN, ALLOWS FOR HUMAN ERROR, LOSS OF PAPERWORK, AND DELAYS AND THWARTS EFFECTIVE COMMUNICATION.

Superior Court, the current condition of release business process is exclusively paper driven. While

Conditions of Release in Arizona

many courts are beginning to capture this information electronically through data fields in their case management system, conditions may not be entered and updated for hours or even days after the Release Order has become effective. Moreover, modifications to conditions of release are typically not captured as separate fields in a database but rather, as a narrative within a court minute order.

To maintain overall system integrity and ensure that justice partners are confident that the information returned is actionable, thereby avoiding accusations of wrongful arrest, courts must migrate to a process where conditions of release are updated in real time. Addressing this issue will necessitate a change in the business process of the courts by requiring real-time entry of both the initial conditions and any subsequent modifications. In 2011, Maricopa County successfully implemented this approach, and now all new and updated Release Orders are issued directly from the bench after being updated by the judicial officer. Implementing these changes would shorten lag times for entry into the court case management system by at least 2-3 days;

When a case is fully adjudicated (i.e., defendant has either been found not guilty or sentenced), it is essential to ensure that there is a seamless and automated method to not only remove the respective conditions of release from the Arizona repository, but also from the national NICS System. This removal will likely be triggered by a docketing entry in the court case management system. Therefore, the system must account for the likelihood that the court case number may change as the result of case bind over.

8.2 INCONSISTENT RELEASE ORDERS

There are currently dozens of variations on the ‘standardized’ Form Six: Release Order originally designed by the AOC. However, a review of these various Orders shows that for the

Conditions of Release in Arizona

most part, they only differ in format, not in the information captured or in the types of conditions that might be indicated. To implement a statewide system where conditions are enforceable, the AOC may need to develop a single standardized Release Order and mandate its use through court rule. In fact, the AOC is currently in the process of recommending changes to the Form 6. On August 6, 2016, the AOC submitted a “Petition to Amend Rules 6, 7 and 41 of the Arizona Rules of Criminal Procedure.” (Arizona Administrative Office of the Courts, 2016). This Petition specifies changes to the Form 6 to maintain its alignment with the updated Court Rules.

A statewide, standardized form will also ensure that active conditions always capture key data fields that are critical to understanding the context of enforcement. For example, “no contact” conditions should always include the name of the protected party and/or a specific address.

8.3 VERIFICATION OF DEFENDANT IDENTITY

Shortly after a defendant is booked into the jail, the court will create a new court case using the *booking information*. Because only hours separate the booking from the creation of the court case, this *booking information* has typically not yet been biometrically verified. Consequently, any ordered conditions of release will be issued using the *booking* name and date of birth. If this identity is later determined to be false, it is important that court case and associated conditions be automatically updated to reflect the biometrically verified identity.

To resolve this issue, the court and booking agency will need to work closely together when the defendant’s identity is found to be false. Any conditions of release that are associated with that false identity will need to be automatically transferred to the biometrically verified identity. One alternative to avoid this situation is to use rapid identification, two-fingerprint devices to confirm

Conditions of Release in Arizona

defendant identity during the initial appearance⁷. In fact, many of these devices are now being deployed to superior court criminal courtrooms statewide. While these systems cannot be used to create criminal history, within two minutes they can biometrically confirm identity.

8.4 CONFLICTING CONDITIONS OF RELEASE

It is common for a defendant to be under conditions of release across multiple court cases. For example, the family court may have an active order that *authorizes* contact between the defendant and their family. However, if the defendant is also involved in a criminal case, the

It is common for conditions to be issued in one case that are in direct conflict with conditions that have been issued in another criminal or family court case.

criminal court could unwittingly create conflicting conditions that *prohibit* contact between the defendant and their family. This scenario not only creates

unnecessary confusion for the defendant, but also places law enforcement officers in a precarious position by requiring that they interpret and deconflict these conditions. Prior to issuing a Release Order, the ability for a court to retrieve all active conditions of release for a defendant would help avoid conflicting orders and likely prove a beneficial tool for the court and pretrial court services. Additionally, clear guidelines need to be established to assist law enforcement and judicial officers when conflicting conditions arise.

8.5 ENFORCEMENT MECHANISMS

Law enforcement, the courts, and prosecutors must work together at the local level to develop agreements and processes for filing misconduct violation charges. Typically, the

⁷ Two fingerprint identification systems can only confirm identity if a Type O1 fingerprint for the defendant was previously captured.

Conditions of Release in Arizona

underlying charge is a misdemeanor and is likely to be adjudicated in a municipal court. Consequently, the city court and city attorney must be involved in the planning for how these cases will be charged. Given caseloads, it will likely be necessary that these core stakeholders work together to not only understand the importance of enforcing conditions of release, but also to ensure that the city attorney promptly files these cases in their municipal court.

8.6 DEFENDANT SIGNATURE

One of the implications of a paper-based system is that it is very easy to misplace and misfile documentation such as the signed copy of the Release Order. For prosecutors to successfully convict a defendant for pretrial misconduct, evidence that the defendant was notified of these conditions is critical. Although hearings are recorded, obtaining their signature is the best way to demonstrate defendant acceptance of the conditions. A completely digital process would likely leverage digital signature pads to capture and attach the defendant signature to the court order within the court case management system.

9 CONCLUSIONS

There is broad support for implementing a statewide electronic Conditions of Release System. Based on this statewide assessment, there are at least **five significant benefits** that can be anticipated:

- **Community Safety:** Electronically sharing Release Orders with conditions of release would provide law enforcement with the information necessary to keep domestic violence victims safe, enforce defendant releases, and prevent the purchase of firearms by prohibited persons thereby maximizing the likelihood of long term success for the public safety risk assessment program. As found by Goldkamp, et. al. in the Philadelphia Experiment,

Conditions of Release in Arizona

conditions of release must be enforced to be effective. To use their term, there must be a “hammer” and consequences for pretrial misconduct. When the Tucson Police Department visits defendants who have not complied with their condition prohibiting possession of a deadly weapon, *it encourages compliance*. Likewise, when a Glendale or Mesa Police Department Domestic Violence Detective performs a ‘knock and talk’ compliance check, *it encourages compliance* by reminding defendants that they are being monitored and that pretrial misconduct will not be tolerated. The purpose of these programs is to safeguard the community and dissuade the defendant from misconduct. But they are only possible when law enforcement knows, in real time, the terms of a defendant’s release.

- ***Officer Safety:*** Sharing conditions of release would address officer safety issues by providing critical conditions of release information to law enforcement personnel when engaging with the public. An offender knows when they are on pretrial release with conditions. When confronted by a law enforcement officer, it is essential that the officer is also aware of these conditions and can take the appropriate measures to ensure their own safety. Any conditions of release sharing system must leverage existing Arizona law enforcement systems, such as the ACJIS, to streamline communications.
- ***Simplify Conditions of Release Compliance:*** As described previously, it is common for the same criminal defendant to be a party in multiple criminal and civil cases – all which may have imposed their own conditions on the person. The potential for conflicting conditions makes compliance difficult for the defendant and enforcement difficult for judicial personnel. A statewide repository of conditions of release will inform judicial

Conditions of Release in Arizona

officers and pretrial services officers so that in many cases, they can avoid issuing conflicting Release Orders.

- ***Unauthorized Purchase of Firearm from a Federal Firearms Licensees (FFL):*** When the Release Order stipulates that a defendant can be released but requires that they surrender their deadly weapons, this information should be shared with the FBI NICS System to prevent them from purchasing additional weapons. Once notified, when performing the background check, the FBI will notify the FFL that the firearms transaction should either be delayed or denied.
- ***Efficiency:*** Several local programs have been developed to enforce conditions of release. While highly beneficial, they are also labor intensive because of the amount of effort that goes into simply putting the conditions of release in the hands of the right person at the right time. An automated system will allow detectives to spend more time on investigations and compliance checks while also ensuring that they have updated and accurate information that incorporates modifications and terminations of conditions.

As Arizona increasingly releases pre-trial defendants, enforcement monitoring must be likewise upgraded. While a statewide condition of release repository is technically feasible, it will require that policies and business processes evolve to support a mission critical system where information integrity is critical. Automatic sharing of conditions of release, if they are current and updated in real time, will provide the Arizona Criminal Justice Community with extraordinary benefits: not only the ability to enforce these conditions but also positively impact officer safety, community protection and reinforcement of a consistent legal system.

Conditions of Release in Arizona

10 GLOSSARY OF ACRONYMS

Acronym	Definition
ACCH	Arizona Computerized Criminal History System
ACJIS	Arizona Criminal Justice Information System
AFIS	Automated Fingerprint Identification System
AOC	(Arizona) Administrative Office of the Courts
APETS	Adult Probation Enterprise Tracking System
BJS	Bureau of Justice Statistics
DPS	(Arizona) Department of Public Safety
FFL	Federal Firearms Licensees
JMS	Jail Management System
JWI	Justice Web Interface
MCAO	Maricopa County Attorney's Office
PIMA	Pima Information Management Application
PSA	Public Safety Assessment
SID	State Identification Number
SME	Subject Matter Expert
Type 01	A specific type of fingerprint that creates criminal history in ACCH

Conditions of Release in Arizona

11 WORKS CITED

- Arizona Administrative Office of the Courts. (2016). *R-16-0041 Rules 6, 7 and 41, Ariz. Rules of Criminal Procedure*. Retrieved from Court Rules Forum: <https://www.azcourts.gov/Rules-Forum/aft/627>
- Bellows, L. M. (2016). *DV Compliance Report Statistics*. Mesa Police Department.
- Berry, D. (2011). *The Socioeconomic Impact of Pretrial Detention*. New York, NY: Open Society Foundations.
- Conference of State Court Administrators. (2013).
<http://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/Evidence%20Based%20Pre-Trial%20Release%20-Final.ashx>. Retrieved from 2012-2013 Policy Paper Evidence-Based Pretrial Release:
<http://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/Evidence%20Based%20Pre-Trial%20Release%20-Final.ashx>
- Foundation, L. a. (2013). *PRETRIAL CRIMINAL JUSTICE RESEARCH*. New York City. Retrieved from
http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-Pretrial-CJ-Research-brief_FNL.pdf
- GOLDKAMP, J. S. (2006). *Journal of Experimental Criminology*.
- Goldkamp, J. S. (2006). *Restoring Accountability in Pretrial Release: The Philadelphia Pretrial Release Supervision Experiments*.
- Maricopa County Criminal Justice System. (2016, 2016). Retrieved from maricopa.gov:
http://www.maricopa.gov/CriminalJustice/pdf/Monthly/July_2016.pdf
- Maricopa County Justice System Planning and Information. (2016). *The Hidden Cost of Pretrial Detention*. Retrieved from
<http://www.azcourts.gov/Portals/74/TFFAIR/Resources/THE%20HIDDEN%20COSTS%20OF%20PRETRIAL%20DETENTION%20-%20FINAL%20HANDOUT.pdf>
- Maricopa County, AZ. (2016). *Maricopa County FY 2016 Adopted Budget*. Retrieved from
<https://www.maricopa.gov/Budget/pdf/FY16ABSSUMMARYADOPTED.pdf>
- Pima County Arizona. (2016). *Pima County Safety and Justice Challenge Grant*. Retrieved from Pima.gov:
<http://webcms.pima.gov/cms/One.aspx?portalId=169&pageId=226609>
- Pima County, AZ. (2016). *Pima County Arizona Adopted Budget Fiscal Year 2016/2017*. Retrieved from
http://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/Finance%20and%20Risk%20Management/Reports/budget%20reports/2016-2017/2016-2017%20Adopted%20Budet.pdf
- Supreme Court of the State of Arizona . (2016). *TASK FORCE ON FAIR JUSTICE FOR ALL: Court-Ordered Fines, Fees, and Pretrial Release Policies*. Phoenix. Retrieved from
<http://www.azcourts.gov/LinkClick.aspx?fileticket=bmECOPU-FD8%3d&portalid=74>