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YOLO COUNTY DISTRICT ATTORNEY POLICIES

PREAMBLE

Now, more than ever, the policies of a District Attorneys' office provide the framework for navigating the path of justice considering the simultaneous, and sometimes competing, interests of public safety, accountability, vindication of victims' rights, the rights of a defendant to due process and fair consideration and our duty to all citizens, including both defendants and victims and their families. These policies are a guide to accomplishing the goal of justice. This office hereby incorporates the substance of the California District Attorneys' Association 2016 publication "Professionalism" as if fully set forth herein.

1. BAIL AND PRETRIAL RELEASE

- A. Although the Court is ultimately responsible for the decision regarding bail amounts or pretrial release, District Attorneys are empowered to ask for bail, detention with no bail, or a pretrial release from custody within the limits of California law. Defendants are presumed innocent until proven guilty; however, in the interest of protecting the public and preventing the flight of the defendant to avoid prosecution, pretrial detention (with due process) is permitted by law. These considerations, however, must be balanced against the disruptive effect of pretrial incarceration, even for short periods, and its effect on employment, education and the family.
- B. The below bail policy establishes a multiple-step process to guide DDAs in litigating bail and pretrial release within the framework of California Law and our obligations as protectors of the public.
- C. Presumptive Release: A presumptive release policy for people charged with low level offenses increases efficiency, reduces the disruption an arrest has on a person's life, and reserves the resources of the criminal legal system for the cases that raise concerns about public safety. DDAs shall concur in to the pretrial release of people facing either misdemeanor or felony charges if the defendant:

1. Has no pending criminal cases;
2. Has no outstanding warrants;
3. Is not currently on probation or parole;
4. Is not required to register under Penal Code 290, et seq.;
5. Has not willfully failed to appear for an appearance in the present case (unless the effort would be futile or is part of an existing pattern or presents a safety risk, defense counsel should be allowed a short period of time to investigate and take action upon a client's non-appearance before a warrant is issued); and
6. Is not currently on Post Release Community Supervision or is serving a split sentence under Penal Code 1170(h)(B).

DDAs shall not make this presumptive release request in cases involving:

1. "Violent" felonies as defined under Penal Code 667.5(c);
2. Escapes from custody, whether or not force or violence is used;
3. Fugitive complaints;
4. Arrests occurring out of state where the defendant is brought into the state;
5. Arrests preceded by flight or active concealment, *i.e.*, hiding or a period "on the run" from law enforcement;
6. Defendants facing potential indeterminate ("life") terms of imprisonment or determinate terms of eight (8) or more years;
7. Misdemeanor or felony offenses involving acts of actual or threatened physical violence, including stalking charges, or the use of force on another person;
8. Offenses where the person has committed or threatened to commit great bodily harm to another;
9. Sexual assault offenses on another person or offenses the conviction for which would require registration under Penal Code 290, et seq.;
10. A violation of Vehicle Code Section 2800, *et seq.*;
11. Defendants having a "demonstrated pattern of non-appearance" to avoid

prosecution, as defined below; or

12. Driving Under the Influence (DUI) cases where:

- The defendant is charged with a new DUI committed while on probation for an existing DUI;
- The defendant is charged with his or her third DUI committed within a ten (10) year period; or
- Defendant is charged with a DUI after having been previously convicted of a felony DUI or an alcohol-related vehicular manslaughter charge.

D. Demonstrated Pattern of Nonappearance. DDAs shall examine the immediately available information regarding a defendant's history of non-appearance and make a determination of whether prior nonappearance(s) were willful flights to avoid prosecution or missing court for some other more benign reason, such as inability to secure transportation, childcare, or simple forgetfulness. That is, does the information available show a identifiable alternative explanation for the history of missed court appearances other than willful flight? This assessment can be made based on information provided by the accused, their attorney, all case records (including CLETS), and information provided by pretrial services. This inquiry should include:

1. Did the person have outstanding judicial warrants for failure to appear for over thirty days? A pattern of missed court dates where a person reappears a few days or weeks later suggests a negligent nonappearance and not actual willful flight.
2. Was there a reasonable or understandable explanation for the history of missed court appearances? Reasonable or understandable circumstances for nonappearance include if the person may have faced immigration or child custody consequences for criminal legal system involvement, the person had housing or employment instability, the person had been a victim of domestic violence or human trafficking, struggled with substance use disorder, mental health disorder, or another behavioral health issue, and whether the crime charged was motivated by circumstances of poverty.

A Pattern of Nonappearance to avoid prosecution is presumptively established if:

- The person has three (3) or more failures to appear within the previous five (5) years for charges in Yolo County where the person did not voluntarily reappear in court within 30 days of the failure to appear.

OR

- The person has two or more previous failure to appear convictions.

3. Pretrial Services and Supervised Release. If the primary reason for not allowing for

release is a Demonstrated Pattern of willful Non-Appearance, and Probation has offered to provide pretrial services (*i.e.*, “Supervised Release”), the DDA shall request release unless the DDA can explain and document in the file why pretrial services shall not be sufficient to assure future appearances.

If a case does not qualify for presumptive release, the DDA should still strongly consider release, either on recognizance or under nonmonetary conditions, if the person is not a flight risk or a danger of committing physical violence or great bodily harm. The DDA should consider what condition, or set of conditions, would reasonably assure the person would not be a public safety risk to the community and reappear in court. Only if, by clear and convincing evidence, no condition or set of conditions would reasonably guarantee the person would remain safe or return to court, then a DDA may request bail as allowed by law.

4. Reasonable Bail. Except as provided above, a DDA may request bail in appropriate cases. The DDA must provide a written justification in the file with fact-specific reasons for why bail is being requested. The reasons must touch upon all relevant factors, including those outlined above, and include an analysis of whether it is justifiable to expend the county’s financial resources for detention in this case and why less restrictive and less costly alternative(s) would not suffice. In making this determination the DA’s office should consider all relevant factors, including the severity of the charge, the likelihood and potential harm of flight, and whether additional penalties under California Penal Code sections 853.7 or 1320 would suffice. Where the law does not require a particular bail amount to be set, if the court sets money bail in an amount that a person cannot afford, which is the equivalent of an order of detention, the court must make the findings required by law. (Note “required by law” replaces “necessary for remand—in this case, that no other alternative would suffice to ensure this person’s return to court except for pretrial detention.”)