

Pretrial Tool Group Meeting
8/4/2017

Commissioners Present: Jahna Lindemuth, Quinlan Steiner, Trevor Stephens, Dean Williams, Joel Bolger, Greg Razo

Attendees: Melissa Threadgill, Kristin Bechtel, John Skidmore, Nancy Meade, Barbara Dunham, Geri Fox, Robert Henderson, Dunnington Babb, Natasha McClanahan, Tara Rich, and Susanne DiPietro

Meeting Notes:

The following is what was decided today for recommendation to the August 23 Commission meeting.

Question 1: Use the NCA scale only or pick the highest scale?

- Answer: pick the scale with the highest rating.
- Ratings on both scales will be reported, but it should be clear at the top of the report what the “binding” score is.
- The solution presented right now (to pick the highest) seems to best reflect the statutory requirement that pretrial release decisions take into account both risk of failure to appear and safety of the victim/community.

- The group agreed that the full Commission should discuss and decide whether to ask the legislature to change the statute. A recommendation for a statutory change could adopt our current solution, or it might advance a different solution. In the meantime, however, DOC needs to move forward with its regulatory process, and it will do so with the current solution.

Question 2: How to group the categories for NCA?

- Answer: very low + low = low; moderate + moderate high = moderate; high = high.
- This is the CJI recommendation and will give the best outcomes.
- In other words, for the NCA scale:
 - o 0-5 = low
 - o 6-9 = moderate
 - o 10 = high
- For the FTA scale:

- 0-4 = low
- 5-6 = moderate
- 7-8= high

Question 3: How should this information be presented to the judges & parties?

- Geri and her team are working on this. They will give the low/mod/high designation and the scores, and hopefully a visual of some kind.
- The group discussed whether to report the original designations provided by Dr. Bechtel (e.g. very low/low/moderate/moderate high/high) but it was decided this would be too confusing.
- The group also discussed whether the report should include both grids—i.e. whether it should explain how the statutory requirements are different for the pre-trial officer's recommendation vs. the judge's release decision. It was decided this was not necessary, though it would be helpful to have the information on what the given outcome requires. For example, it would say "Defendant scored Low; pretrial recommendation is OR release; OR release is mandatory" or "Defendant scored Moderate, pretrial recommendation is OR release; OR release is presumptive."

Action items:

- Training: the group agreed that training for practitioners will be useful (training for judges is already planned for the judicial conference on October 25 in Girdwood). Geri and Susanne agreed to help organize one or two workshops in Anchorage the week after the judicial conference, and the individual agencies can supplement as they see fit. Training for judges and for practitioners should include enough detail to satisfy them that the tool is evidence-based and fair.
- Law will get to drafting a regulation with the above recommendations. Susanne reminded everyone that they would need to consult with OVR during the regulatory process.

Susanne

Citation vs. arrest

- **Presumption:** Create a presumption of citation for misdemeanors and class C felonies.
- **Overcoming the presumption:** The officer may overcome the presumption if he/she has reasonable grounds to believe the person presents a significant flight risk or significant danger to the victim or the public; or if the officer is not able to verify the person's identification.
- **Exceptions:** Person offenses, DV offenses, violations of release conditions, and any offense for which a warrant or summons has been ordered.
- **Timeframe for appearance:** For misdemeanors and felonies in which a citation was ordered, the notice to appear shall be a minimum of two business days following the issuance of the citation.
- **Release conditions on the citation:** Citation forms may include standard release conditions determined by the courts.
- **Failure to obey a citation:** The penalty would remain the same (a misdemeanor).

Create a pretrial services office (18-month roll out)

Responsibilities include:

- **Pretrial risk assessment**
 - Adopt and validate a pretrial risk assessment tool that does not require a defendant interview. (With technical assistance from JRI Phase II provider.)
 - Assess all defendants for pretrial risk prior to first appearance before a judicial officer.
 - Report risk score and recommendations to the court regarding release and release conditions.
- **Pretrial supervision**
 - Provide varying levels of supervision to monitor compliance with conditions for moderate- and high-risk defendants and defendants with more serious charges who have been released. These services should be made available statewide to the greatest extent possible, and should take advantage of all reasonably available technology, resources, and office space.
- **Diversion recommendations**
 - Make recommendations for pretrial diversion to the Department of Law and municipal prosecutors, with notice to the defendant and the court.
 - Develop state-wide guidelines to standardize which defendants should be recommended for pretrial diversion based on charge severity and criminal history.
 - Conduct outreach to community programs and tribal courts to develop and expand diversion options.

- **Referral services**
 - Provide referral services on a voluntary basis for substance abuse and behavioral health treatment services.

Court date reminder system

- Direct the courts to issue court date reminders to criminal defendants for each of their hearings; and to coordinate and share information about hearing dates and times with the pretrial services office.
- **Not an entitlement:** The creation of this system does not create any new entitlement for the defendant. Failure to receive a reminder is not a defense to a violation for failure to appear.

Pretrial release decision-making framework

- **Grid:** Authorize / mandate the pretrial services office to create a pretrial release decision-making grid (with technical assistance from the JRI Phase II provider) that is evidence-based.
- **Unsecured performance bonds:** Authorize the courts to issue unsecured and partially-secured performance bonds.¹ To collect on forfeited unsecured bonds and restitution, the Department of Law collections unit would have authority to garnish paychecks and Permanent Fund Dividend checks.
- **Categories of defendants on the grid:** Define categories of defendants for the release decision-making grid with regard to release on personal recognizance (PR) or unsecured bond (UB):
 - Category A: The court will always release on PR or UB with appropriate release conditions.
 - Category B: The pretrial services office will always recommend release on PR or UB with appropriate release conditions.
 - Category C: The pretrial services office will usually recommend release on PR or UB with appropriate release conditions.
 - Category D: The pretrial services office will usually not recommend release on PR or UB.
- **Limits on secured money bond:** With the exception of the “always release” category (Category A), the court may depart from a recommendation of release on PR or UB, and order secure

¹ A performance bond is an agreement between the defendant and the court that if the defendant violates his or her conditions of release, he/she will forfeit a certain amount of money. A *secured* performance bond requires the defendant to pay upfront in order to be released; and the defendant would get that money back if they successfully completed the pretrial period. An *unsecured* performance bond does not require an upfront payment, but if the defendant violates conditions of release, the court can order the defendant to pay that amount of money. A *partially-secured* performance bond would require payment of 10% of the bond amount upfront in order to be released. That amount would be recoverable if the defendant successfully completes the pretrial period. Currently in Alaska, courts only have authority to issue *secured* performance bonds. As used in the policy description on the pretrial release decision-making framework, “unsecured bond” would refer to both appearance bonds and performance bonds, but statute would have to change to permit courts to issue unsecured performance bonds.

money bond if it finds on the record that there is clear and convincing evidence that no other conditions of release can reasonably assure court appearance and public safety.

- **Inability to pay secured money bond:** A defendant’s inability to pay a certain amount of secured money bond should be considered “new information not previously considered” for at least one bail review hearing.

The following sample grid captures Categories A through D as recommended by the Alaska Criminal Justice Commission.

	Misdemeanor non-person offense (non-DV / non-DUI)	Class C felony non-person offense (non-DV / non-DUI)	DUI	Failure to appear / violation of release condition	Other
Low-risk	PR or UB release	PR or UB release	PR or UB recommended	PR or UB usually recommended	PR or UB usually recommended
Moderate -risk	PR or UB release	PR or UB recommended	PR or UB recommended	PR or UB usually recommended	PR or UB not usually recommended
High-risk	PR or UB recommended	PR or UB recommended	PR or UB usually recommended	PR or UB not usually recommended	PR or UB not usually recommended

All releases on personal recognizance (PR) or unsecured bond (UB) would be accompanied by release conditions and, when appropriate, varying levels of pretrial supervision.

Release conditions

- **Release conditions recommended by pretrial services office:** Authorize / mandate the pretrial services office to recommend appropriate release conditions to the court for each defendant who they recommend be released on personal recognizance or unsecured bond.
 - **Release conditions should not prevent release:** When the pretrial services office recommends release on personal recognizance or unsecured bond with appropriate release conditions, those conditions should facilitate the defendant’s safe release to the community. They should not serve as a barrier to release.
 - **Remedy if release conditions do prevent defendant’s release:** If a defendant’s release conditions prevent the defendant’s release, he or she would be entitled to a bail review hearing where the court shall either revise the conditions, or find on the record that there is clear and convincing evidence that no other release conditions can reasonably assure court appearance and public safety.
- **Focus restrictive conditions on higher-risk defendants:** More restrictive release conditions, including enhanced pretrial supervision by the pretrial services office, drug and alcohol testing, electronic monitoring, third-party custodians, etc. should be prioritized for defendants with more serious charges and higher risk levels who are released pretrial.

- **Limits on third-party custodian conditions:** The court may only order a third-party custodian condition if:
 - Pretrial supervision provided by the pretrial services office is not available;
 - No secured money bond is ordered; and
 - The court finds on the record that there is clear and convincing evidence that no less restrictive release condition can reasonably assure court appearance and public safety.
- **Changes to third-party custodian qualifications:** Revise the statute to only disqualify a person from serving as a third-party custodian if the court finds that there is a reasonable possibility that the prosecution will call them as a witness. (Current statute disqualifies a person if they *may be called* as a witness.)

Bail schedules for misdemeanor offenses prior to first appearance

Version 1:

- **Uniform bail schedules with regard to PR releases:** Direct the courts to ensure that all misdemeanor bail schedules in the state are uniform with regard to release on personal recognizance.
 - **Version 1(a).** Bail schedules could include dollar amounts.
 - **Version 1(b).** Bail schedules would only include misdemeanor charges that would result in personal recognizance release. All other defendants would remain detained until they've received a risk assessment and had their first appearance before a judicial officer.

Version 2:

- **Eliminate bail schedules:** Once the pretrial services office is up and running, and the risk-based release decision-making grid is in place, the courts and the Department of Corrections would be directed to eliminate all bail schedules. Any defendant who was arrested by law enforcement would remain detained until they received a risk assessment and had their first appearance before a judicial officer.

Question for the subgroup: Should the Commission's recommendation be Version 1 or Version 2? If it's Version 1, should it be 1(a) or 1(b)?

Penalties for Violations of Conditions of Release (VCOR) and Failure to Appear (FTA)

Change consequences for VCOR and FTA

- **Penalty:** VCOR and FTA would be defined as violations, punishable by a fine of up to \$500.
- **Exceptions:** The existing criminal penalties would remain in place for FTA with intent to avoid prosecution and FTA for more than 30 days; and for violation of a protective order or no-contact order.

- **Arrest and detention authorized:** Law enforcement officers and pretrial services officers would be authorized to arrest a defendant for VCOR or FTA and the Department of Corrections would be authorized to hold the defendant in a detention facility until the court can schedule a bail review hearing.
- **Review of release conditions:** At the bail review hearing, the court could revise the defendant's release conditions or determine that no revised release conditions can reasonably assure court appearance and public safety.

**Materials for Pretrial Subgroup meeting
Nov. 19, 2015**

Agenda / Objectives

- 9:00 – 9:05 Introduction
- 9:05 – 9:50 Citation vs. arrest
- 9:50 – 10:00 Pretrial services office / court date reminder system
- 10:00 – 10:45 Pretrial release decision-making framework
- 10:45 – 11:00 Release conditions
- 11:00 – 11:25 Bail schedules for misdemeanor offenses prior to first appearance
- 11:25 – 11:45 Penalties for violations of release conditions and failure to appear
- 11:45 – 12:00 Public comment

***** Discussion draft – not for distribution *****

Citation vs. arrest

- **Presumption:** Create a presumption of citation for misdemeanors and class C felonies.
- **Overcoming the presumption:** The officer may overcome the presumption if he/she has reasonable grounds to believe the person presents a significant flight risk or significant danger to themselves or others; or if the officer is not able to verify the person's identification.
- **Exceptions:** Person offenses, DV offenses, violations of release conditions related to stalking, domestic violence, and sexual assault, and any offense for which a warrant or summons has been ordered.
- **Other exceptions to be discussed:**
 - **Misdemeanors:** criminal trespass 1st degree, endangering the welfare of a child, escape in the 4th degree, unlawful evasion in the 2nd degree, resisting or interfering with arrest, failure to appear, interfering with a DV report, unlawful contact 1st and 2nd degree, violating conditions of release, harassment 1st degree, criminal possession of an explosive; 2nd or subsequent DUI / refusal.
 - **Felony C's:** felony DUI / refusal, burglary 2nd degree, escape 3rd degree, possession of child pornography, criminal possession of an explosive.
 - **Question for the subgroup:** Do some or all of these already fall under the definitions of "flight risk" or "danger to self or others"?
- **Timeframe for appearance:** For misdemeanors and felonies in which a citation was ordered, the notice to appear shall be two business days following the issuance of the citation.
 - **Question for the subgroup:** Should there be any exceptions to the two-day rule for officers in rural and remote parts of the state?
- **Release conditions on the citation:** Citation forms [**may?** / **shall?**] include standard release conditions determined by the courts.
- **Failure to obey a citation:** The penalty would remain the same (a misdemeanor).

Estimated impact: ___ beds

Create a pretrial services office (18-month roll out)

Responsibilities include:

- **Pretrial risk assessment**
 - Adopt and validate a pretrial risk assessment tool that does not require a defendant interview. (With technical assistance from JRI Phase II provider.)
 - Assess all defendants for pretrial risk prior to first appearance before a judicial officer.
 - Report risk score and recommendations to the court regarding release and release conditions.
- **Pretrial supervision**
 - Provide varying levels of supervision to monitor compliance with conditions for moderate- and high-risk defendants and defendants with more serious charges who have been released. These services should be made available statewide to the greatest extent possible, and should take advantage of all reasonably available technology.
- **Diversion recommendations**
 - Make recommendations for pretrial diversion to the Department of Law and municipal prosecutors, with notice to the defendant and the court.
 - Develop state-wide guidelines to standardize which defendants should be recommended for pretrial diversion based on charge severity and criminal history.
 - Conduct outreach to community programs and tribal courts to develop and expand diversion options.
- **Referral services**
 - Provide referral services on a voluntary basis for substance abuse and behavioral health treatment services.

Court date reminder system

- Direct the courts to issue court date reminders to criminal defendants for each of their hearings; and to coordinate / share information about hearing dates and times with the pretrial services office.
- **Not an entitlement:** The creation of this system does not create any new entitlement for the defendant. Failure to receive a reminder is not a defense to a violation for failure to appear.

Pretrial release decision-making framework

- **Grid:** Authorize / mandate the pretrial services office to create a pretrial release decision-making grid (with technical assistance from the JRI Phase II provider) that is evidence-based.
- **Unsecured performance bonds:** Authorize the courts to issue unsecured and partially-secured performance bonds.¹
- **Categories of defendants on the grid:** Define categories of defendants for the release decision-making grid with regard to release on personal recognizance (PR) or unsecured bond (UB):
 - Category A: The court will always release on PR or UB with appropriate release conditions.
 - Category B: The pretrial services office will always recommend release on PR or UB with appropriate release conditions.
 - Category C: The pretrial services office will usually recommend release on PR or UB with appropriate release conditions.
 - Category D: The pretrial services office will usually not recommend release on PR or UB.
 - **Question for the subgroup:** Should there be a recommendation related to enhancing efforts by the Department of Law to collect payment on unsecured bond when the defendant fails to appear or violates release conditions?
- **Limits on secured money bond:** With the exception of the “always release” category (Category A), the court may depart from a recommendation of release on PR or UB, and order secure money bond if it finds on the record that there is clear and convincing evidence that no other conditions of release can reasonably assure court appearance and public safety.
- **Detention without bail:** With a state Constitutional amendment, the court would have the authority to order a defendant detained without bail if it finds on the record, with an appropriate due process hearing, that there is clear and convincing evidence that no conditions of release can reasonably assure court appearance and public safety.
 - **Question for the subgroup:** Should courts have the Constitutional authority in limited circumstances to detain defendants without bail?
 - **Question for the subgroup:** If courts were to have the authority to detain without bail, should they also be permitted to order high money bail as a means to detain someone?

¹ A performance bond is an agreement between the defendant and the court that if the defendant violates his or her conditions of release, he/she will forfeit a certain amount of money. A *secured* performance bond requires the defendant to pay upfront in order to be released; and the defendant would get that money back if they successfully completed the pretrial period. An *unsecured* performance bond does not require an upfront payment, but if the defendant violates conditions of release, the court can order the defendant to pay that amount of money. A *partially-secured* performance bond would require payment of 10% of the bond amount upfront in order to be released. That amount would be recoverable if the defendant successfully completes the pretrial period. Currently in Alaska, courts only have authority to issue *secured* performance bonds. As used in the policy description on the pretrial release decision-making framework, “unsecured bond” would refer to both appearance bonds and performance bonds, but statute would have to change to permit courts to issue unsecured performance bonds.

- **Question for the subgroup:** For purposes of permitting a bail review hearing, should inability to pay be considered “new information not previously considered”?

Grid categories: Version 1

	Misdemeanor non-person offense (non-DV / non-DUI)	Class C felony non-person offense (non-DV / non-DUI)	DUI	Failure to appear / violation of release condition	Other
Low-risk	PR or UB release	PR or UB release	PR or UB recommended	PR or UB usually recommended	PR or UB usually recommended
Moderate -risk	PR or UB release	PR or UB recommended	PR or UB recommended	PR or UB usually recommended	PR or UB not usually recommended
High-risk	PR or UB recommended	PR or UB recommended	PR or UB usually recommended	PR or UB not usually recommended	PR or UB not usually recommended

All releases on PR or UB would be accompanied by release conditions and, when appropriate, varying levels of pretrial supervision

Estimated impact: ___ beds

Grid categories: Version 2

	Misdemeanor non-person offense (non-DV / non-DUI)	Class C felony non-person offense (non-DV / non-DUI)	DUI	Failure to appear / violation of release condition	Other
Low-risk	PR or UB recommended	PR or UB recommended	PR or UB recommended	PR or UB usually recommended	PR or UB usually recommended
Moderate -risk	PR or UB recommended	PR or UB recommended	PR or UB recommended	PR or UB usually recommended	PR or UB not usually recommended
High-risk	PR or UB recommended	PR or UB recommended	PR or UB usually recommended	PR or UB not usually recommended	PR or UB not usually recommended

All releases on PR or UB would be accompanied by release conditions and, when appropriate, varying levels of pretrial supervision

Question for the subgroup: Should the statutory parameters for the release decision-making grid reflect the Version 1, Version 2, or something in between?

Release conditions

- **Release conditions recommended by pretrial services office:** Authorize / mandate the pretrial services office to recommend appropriate release conditions to the court for each defendant who they recommend be released on personal recognizance or unsecured bond.
 - **Release conditions should not prevent release:** When the pretrial services office recommends release on personal recognizance or unsecured bond with appropriate release conditions, those conditions should facilitate the defendant's safe release to the community. They should not serve as a barrier to release.
 - **Remedy if release conditions do prevent defendant's release:** If a defendant's release conditions prevent the defendant's release, he or she would be entitled to a bail review hearing where the court shall either revise the conditions, or find on the record that there is clear and convincing evidence that no other release conditions can reasonably assure court appearance and public safety.
 - **Question for the subgroup:** Do these policies on release conditions make sense to everyone?
- **Focus restrictive conditions on higher-risk defendants:** More restrictive release conditions, including enhanced pretrial supervision by the pretrial services office, drug and alcohol testing, electronic monitoring, third-party custodians, etc. should be reserved for defendants with more serious charges and higher risk levels who are released pretrial.
- **Limits on third-party custodian conditions:** The court may only order a third-party custodian condition if:
 - Pretrial supervision provided by the pretrial services office is not available;
 - No secured money bond is ordered; and
 - The court finds on the record that there is clear and convincing evidence that no less restrictive release condition can reasonably assure court appearance and public safety.
 - **Question for the subgroup:** Is there consensus on these limits?
- **Changes to third-party custodian qualifications:** Revise the statute to only disqualify a person from serving as a third-party custodian if the prosecution *intends to call them* as a witness. (Current statute disqualifies a person if they *may be called* as a witness.)

Bail schedules for misdemeanor offenses prior to first appearance

Version 1:

- **Uniform bail schedules with regard to PR releases:** Direct the courts to ensure that all misdemeanor bail schedules in the state are uniform with regard to release on personal recognizance.
 - **Version 1(a).** Bail schedules could include dollar amounts.
 - **Version 1(b).** Bail schedules would only include misdemeanor charges that would result in personal recognizance release. All other defendants would remain detained until they've received a risk assessment and had their first appearance before a judicial officer.

Version 2:

- **Eliminate bail schedules:** Once the pretrial services office is up and running, and the risk-based release decision-making grid is in place, the courts and the Department of Corrections would be directed to eliminate all bail schedules. Any defendant who was arrested by law enforcement would remain detained until they received a risk assessment and had their first appearance before a judicial officer.

Question for the subgroup: Should the Commission's recommendation be Version 1 or Version 2? If it's Version 1, should it be 1(a) or 1(b)?

Miscellaneous question for the subgroup: When secured money bail is applied (either by a bail schedule or when it is ordered by the court), should there be a recommendation about expanding options for payment of bail? For example: payment with credit or debit card, payment by a relative over the phone or over the internet rather than in person, etc.

Penalties for Violations of Conditions of Release (VCOR) and Failure To Appear (FTA)

Version 1: Change consequences for both VCOR and FTA

- **Penalty:** VCOR and FTA would be defined as violations, punishable by a fine of up to \$500.
- **Arrest and detention authorized:** Law enforcement officers and pretrial services officers would be authorized to arrest a defendant for VCOR or FTA and the Department of Corrections would be authorized to hold the defendant in a detention facility until the court can schedule a bail review hearing.
- **Review of release conditions:** At the bail review hearing, the court could revise the defendant's release conditions or determine that no revised release conditions can reasonably assure court appearance and public safety.

Estimated impact: ___ beds

Version 2: Change consequences for only VCOR

- Same as Version 1, except it wouldn't apply to FTA.

Question for the subgroup: Should the Commission's recommendation be Version 1, Version 2, or something else?

**Materials for Pretrial Subgroup meeting
Oct. 15, 2015**

Agenda / Objectives

- 9:00 – 9:05 Introduction
- 9:05 – 10:35 Citation vs. arrest
- 9:35 – 10:45 Pretrial release decision-making framework
- 10:45 – 11:15 Pre-hearing release / detention decisions for petitions to revoke probation and parole
- 11:15 – 11:45 Penalties for failure to appear and violations of release conditions
- 11:45 – 12:00 Public comment

***** Discussion draft – not for distribution *****

Citation vs. arrest

Current practice:

- Officer discretion to issue a citation for misdemeanors unless crime involving violence, domestic violence, harm to person or property, or danger to self or others.

Relevant research principle:

- Pretrial detention longer than 24 hours can lead to worse outcomes.¹

Areas of general consensus:

- There should be a presumption of citation rather than arrest for some offenses.
- The list of exceptions (making arrest mandatory) should be narrower.

Questions to decide:

- For which offense types should citation be presumptive?
- For which offense types should citation be discretionary?
- For which offense types should arrest be mandatory?

¹ Lowenkamp, VanNostrand & Holsinger (2013), *The Hidden Cost of Pretrial Detention*.

Policy reform options

Narrow exceptions: Eliminate exception requiring arrest for “harm to property”.

Presumptive citation:

- **Version 1:** There is a presumption that the officer will issue a citation rather than arrest for all **nonviolent misdemeanors**. The presumption can be overcome with a finding that the person presents a danger to themselves or others.
 - Estimated to save 48 beds²

- **Version 2:** There is a presumption of citation rather than arrest for all **nonviolent misdemeanors and nonviolent Class C felonies**. The presumption can be overcome with a finding that the person presents a danger to themselves or others.
 - Estimated to save 80 beds

- **Version 3:** There is a presumption of citation rather than arrest for all **nonviolent misdemeanors and nonviolent Class C felonies**. The presumption can be overcome with a finding that the person presents a danger to themselves or others. The exceptions list would be altered to give officers discretion to issue citations for **violent Class B misdemeanors**.
 - Estimated to save 80 beds

² Estimated policy impacts provide the number of beds that will no longer be needed by this group by July 1, 2025. All estimated impacts are a reduction for future bed need. Bed impacts are NOT cumulative across version options. These bed impacts are preliminary and will change as the policies and underlying assumptions become more defined.

Pretrial release decision-making framework

Current practice:

- Defendants have a Constitutional right to be released on bail.
- There's a presumption of release on personal recognizance or unsecured bond.
- Conditions of release are authorized, including money bond; and are applied at the judge's discretion.
- Presumption of detention for unclassified and Class A felonies, sexual felonies, felony DUI and refusal to submit to chemical testing, and person crimes / DV with certain criminal history.

Relevant research principles:

- Pretrial risks can be predicted.³
- Release conditions should be tied to risk level.⁴
- Pretrial detention longer than 24 hours can lead to worse outcomes.⁵
- Unsecured money bond is as effective at achieving court appearance and public safety as secured money bond.⁶

Areas of general consensus:

- Pretrial risk assessment would be a helpful tool.
- Release conditions should be tied to risk level.
- Lower-risk defendants shouldn't be detained just because they can't pay.
- Higher-risk defendants with serious charges shouldn't be released just because they *can* pay.
- Creating a pretrial services division will lead to more releases and likely cost less than detention.
- The presumption of release on recognizance should result in most defendants being released (roughly 80%).

Questions to decide:

- Which defendants should never be detained pretrial?
- Which defendants should courts have discretion to detain or release pretrial?
- How should the court's discretion be guided?

³ Mamalian (2011), *State of the Science of Pretrial Risk Assessment*.

⁴ VanNostrand (2009), *Pretrial Risk Assessment in the Federal Court*.

⁵ Lowenkamp, VanNostrand & Holsinger (2013), *The Hidden Cost of Pretrial Detention*.

⁶ Jones (2013), *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option*.

Example pretrial release decision-making grid

	Nonviolent misdemeanor	Nonviolent felony	Violent misdemeanor	Violent felony
Low-risk	Detention not an option 100% ROR Minimal conditions	ROR recommended Supervision level 1	ROR recommended Supervision level 2	ROR sometimes recommended Supervision level 3
Moderate-risk	Detention not an option 100% ROR Minimal conditions	ROR recommended Supervision level 1	ROR sometimes recommended Supervision level 3	ROR not recommended
High-risk	Detention not an option 100% ROR Supervision level 1	ROR recommended Supervision level 2	ROR not recommended	ROR not recommended

Definitions:

- **ROR**
 - Release on personal recognizance or unsecured bond with appropriate release conditions / supervision level
 - Release conditions (including financial conditions) shall not result in detention
- **“Detention not an option”**
 - Judicial officer must release the defendant at first appearance with appropriate release conditions
- **“ROR recommended”**
 - Pretrial officer will recommend ROR and appropriate release conditions / supervision
 - Judicial officer has discretion to follow or not follow the recommendation
- **“ROR sometimes recommended”**
 - Pretrial officer may recommend ROR based on the individual case
 - Judicial officer has discretion to follow or not follow the recommendation
- **“ROR not recommended”**
 - Pretrial officer will not recommend ROR
 - Judge has discretion to release the defendant, set secure financial bond, or detain the defendant without bail

Policy reform options

- Adopt a pretrial risk assessment tool.
- Provide statutory guidance for release decision-making framework, tying conditions of release to charge severity and risk score. [See example grid on the previous page.]
- Determine in statute who should never be detained pretrial.
 - **Version 1:** Detention is not an option for all nonviolent misdemeanors
 - Estimated to save **294 beds**
 - **Version 2:** Detention is not an option for all nonviolent charges (misdemeanors or felonies)
 - Estimated to save **413 beds**
 - **Version 3:** Detention is not an option for all nonviolent charges and low-risk violent charges.
- Prohibit release conditions (including financial conditions) that result in detention.
 - This would require a constitutional amendment permitting courts to detain defendants without bail in certain cases (higher-risk defendants with serious charges).
 - Alternative: Reserve secure financial conditions for high-risk, serious cases.

Additional questions to decide:

- If a pretrial services office is created, what responsibilities should it take on?
 - Electronic monitoring?
 - Drug and alcohol testing?
 - Phone contact with defendants?
 - Face-to-face contact with defendants?
 - Third-party custodianship?
 - Court date reminders?
 - Diversion recommendations?
 - Victim safety planning?

Pre-hearing release / detention decision for petitions to revoke probation and parole

Current practice:

- Same statutory provisions re: bail process.
- The court / Parole Board may release on bail, but there is no right to bail if detained on:
 - A petition to revoke parole
 - A petition to revoke probation and the underlying offense is a violent felony

Relevant research:

- Pretrial detention longer than 24 hours can lead to worse outcomes.⁷

Question to decide:

- Which technical violators, if any, should be detained pre-hearing on a petition to revoke probation / parole?

⁷ Lowenkamp, VanNostrand & Holsinger (2013), *The Hidden Cost of Pretrial Detention*.

Policy reform options:

- Provide statutory guidance for release/detention pre-hearing on a PTR.

Policy change Version 1	Technical violation, nonviolent underlying offense	Technical violation, violent underlying offense
Low-risk	ROR is recommended Pretrial supervision level 1	ROR not recommended
Moderate-risk	ROR is recommended Pretrial supervision level 2	
High-risk	ROR is recommended Pretrial supervision level 2	

Policy change Version 2	Technical violation, nonviolent underlying offense	Technical violation, violent underlying offense
Any risk level	Pre-hearing detention not an option 100% ROR with appropriate supervision level	ROR not recommended

Policy change Version 3	Technical violation, nonviolent underlying offense	Technical violation, violent underlying offense
Any risk level	Pre-hearing detention not an option 100% ROR with appropriate supervision level	ROR sometimes recommended with appropriate supervision level

Penalty for failure to appear and violation of release conditions

Current practice: [See purple section of chart on the next page]

Relevant research:

- Sanctions should be proportional to the problem behavior.⁸
- The likelihood of failure to appear can be reduced through court date reminders.⁹
- The likelihood of violations of release conditions can be reduced through pretrial services / supervision tied to risk.¹⁰

Examples from other states:

- Failure to appear can never be a felony: Michigan¹¹, Maryland¹², Utah¹³
- Failure to appear is not punishable as a new criminal charge: Illinois¹⁴, Mississippi¹⁵, Vermont¹⁶, Wyoming¹⁷

Question to decide:

- Are penalties for failure to appear and violations of release conditions out of proportion to the problem behavior? If so, how should they be altered?

⁸ Nagin & Pogarsky (2001), *Integrating Celerity, Impulsivity, and Extralegal Sanction Threats into a Model of General Deterrence: Theory and Evidence*.

⁹ Bechtel, Holsinger, Lowenkamp & Warren (2015), *A Meta-Analytic Review of Pretrial Research: Risk Assessment, Bond Type, and Interventions*.

¹⁰ Danner, VanNostrand & Spruance (2015), *Exploring the Effect of Risk-Based Release Recommendation and Supervision Guidelines on Pretrial Officer Recommendations, Judicial Decision-Making, and Pretrial Outcome*.

¹¹ Michigan Compiled Laws §780.62.

¹² Code of Maryland Statutes §5-212.

¹³ Utah Code § 77-7-22.

¹⁴ 725 Illinois Compiled Statutes § 5/110-3.

¹⁵ Mississippi Code § 99-5-39.

¹⁶ 13 Vermont Statutes § 7560a.

¹⁷ Wyoming Statutes § 7-3-218; Wyoming Rules of Court, Rule 46.4.

Policy reform options:

Underlying charge	Violation behavior	Current Penalty	Policy change Version 1 (Equalize penalties)	Policy change Version 2 (Reduce all penalties)
Felony	Failure to appear	Class C felony	Class A misd.	Class A misd.
	Violation of release conditions	Class A misd.	Class A misd.	Class B misd.
Misdemeanor	Failure to appear	Class A misd.	Class B misd.	Class B misd.
	Violation of release conditions	Class B misd.	Class B misd.	Infraction

**Materials for pretrial subgroup
Alaska Criminal Justice Commission
September 10, 2015**

Agenda / objectives of this meeting:

- 9:00 – 9:20: Review pretrial data and research
- 9:20 – 10:00: Begin discussion of citation vs. arrest
- 10:00 – 10:30: Examine reforms to pretrial release process in other states
 - New Jersey
 - Washington D.C.
 - Kentucky
 - Colorado
- 10:30 – 11:15: Begin discussion of a pretrial release process in Alaska
- 11:15 – 11:30: Set outcome benchmarks for the pretrial subgroup to aim for
- 11:30 – 11:45: Identify additional policy areas for future discussion
- 11:45 – 12:00: Public comment

******Discussion draft – not for distribution******

Relevant data for pretrial policy discussion in Alaska

<p>The prison population is projected to keep growing</p>	<ul style="list-style-type: none"> Prison population is projected to grow by 1,400 beds (27% increase) over the next decade
<p>Pretrial inmates are the fastest growing population in prison</p>	<ul style="list-style-type: none"> Number of pretrial detainees is up 81% in the last decade
<p>Half of the pretrial population is nonviolent</p>	<ul style="list-style-type: none"> 50% are in for nonviolent charges (snapshot on July 1, 2014) <ul style="list-style-type: none"> 15% property, 15% public order, 11% drug, 6% alcohol, 3% other 16% nonviolent misdemeanor, 34% nonviolent felony
<p>Most defendants sent to prison are charged with misdemeanors</p>	<ul style="list-style-type: none"> 76% of pretrial admissions to prison are for misdemeanor charges 56% of pretrial admissions to prison are for <i>nonviolent</i> misdemeanor charges
<p>All defendants are spending longer in prison pretrial</p>	<ul style="list-style-type: none"> Defendants staying longer in prison pretrial than 10 years ago <ul style="list-style-type: none"> 3 days longer for nonviolent misdemeanor charges 6 days longer for violent misdemeanor charges 20 days longer for nonviolent felony charges 33 days longer for violent felony charges
<p>More than half of pretrial defendants are never released</p>	<ul style="list-style-type: none"> 52% of defendants sampled were never released during the pretrial period (based on a case file review)
<p>The majority of defendants with bail of \$500 or more are unable to pay it</p>	<ul style="list-style-type: none"> Secured bail under \$500: 36% unable to post bond Secured bail between \$500 - \$999: 57% unable to post bond Secured bail between \$1,000 - \$2,499: 62% unable to post bond Secured bail of \$2,500 or more: 66% unable to post bond (based on a case file review)
<p>Few defendants are released pretrial on personal recognizance</p>	<ul style="list-style-type: none"> Only 12% of defendants sampled were released on personal recognizance Only 10% had unsecured bond (based on a case file review)
<p>The majority of defendants with third-party custodian conditions are unable to secure one</p>	<ul style="list-style-type: none"> 75% of defendants sampled with third-party custodian condition unable to meet their conditions, and are never released during the pretrial period (based on a case file review)

Relevant research for pretrial policy discussion in Alaska

<p>Pretrial risks can be predicted</p>	<ul style="list-style-type: none"> • Risk of pretrial failure can be predicted¹ • Actuarial risk assessment tools are more accurate than professional judgment alone²
<p>Release conditions should be tied to risk level</p>	<ul style="list-style-type: none"> • Restrictive release conditions (third-party custodians, drug and alcohol testing, electronic monitoring, house arrest, etc.): <ul style="list-style-type: none"> • Lead to better outcomes for higher-risk defendants • Lead to worse outcomes for lower-risk defendants³
<p>Pretrial detention longer than 24 hours can lead to worse outcomes</p>	<ul style="list-style-type: none"> • Increases failure to appear • Increases new criminal activity during the pretrial period • Increases recidivism long-term • (controlling for risk level, charge, and defendant demographics)⁴
<p>Secured money bond is not tied to better outcomes</p>	<ul style="list-style-type: none"> • Does not increase court appearance rates • Does not increase public safety rates • Causes many defendants to be detained rather than released⁵

Based on this research, states have enacted reforms that focus detention resources on defendants with higher risk levels and more serious charges by:

1. Issuing citations rather than arresting for low-level charges
2. Adopting pretrial risk assessment tools
3. Adopting pretrial release decision-making frameworks tied to risk level and charge
4. Prohibiting financial conditions that result in detention
5. Permitting detention in limited circumstances

¹ Lowenkamp & VanNostrand (2013), *Assessing Pretrial Risk Without a Defendant Interview*.

² Mamalian (2011), *State of the Science of Pretrial Risk Assessment*.

³ VanNostrand (2009), *Pretrial Risk Assessment in the Federal Court*.

⁴ Lowenkamp, VanNostrand & Holsinger (2013), *The Hidden Cost of Pretrial Detention*.

⁵ Jones (2013), *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option*.

Policy area: citation vs. arrest

Current practices in Alaska:

- Officers have discretion to issue a citation for misdemeanors unless:
 - Danger to self or others
 - Crime involving violence
 - Crime involving harm to person or property
 - Domestic violence
- 76% of pretrial admissions to prison are for misdemeanor charges
- 56% of pretrial admissions to prison are for *nonviolent* misdemeanor charges
- On July 1, 2014, Alaska was using:
 - 231 prison beds for defendants held pretrial on nonviolent misdemeanor charges
 - 128 prison beds for defendants held pretrial on violent misdemeanor charges
 - 505 prison beds for defendants held pretrial on nonviolent felony charges
 - 614 prison beds for defendants held pretrial on violent felony charges

Examples of states that have adopted reforms to citation policies:

- **Kentucky:** Presumptive citation for nonviolent misdemeanors
- **New York:** Presumptive citation for certain offense types (e.g., drug possession)
- **Maryland:** Presumptive citation for misdemeanors that carry a maximum penalty of 90 days in jail
- **Washington DC:** Citation permitted even after an arrest has been made

Questions for policy discussion

- Should Alaska use more citations in place of arrest? If so, are there policy options from other states that you find appealing?
- What benchmarks should the pretrial subgroup aim for related to arrest and admission to prison pretrial?

Policy area: pretrial release decision-making

Current practices in Alaska:

- Defendants have a constitutional right to be released on bail, except in capital offenses
- There’s a presumption of release on personal recognizance
- Conditions of release are authorized, including money bond
- Bail schedules exist for misdemeanor charges
- Defendants are entitled to the least restrictive release conditions
- Defendants are entitled to review of release conditions if unable to meet them after 48 hours
- If defendant remains detained after review of conditions, another review is authorized only if new information will be presented; “new information” does not include inability to pay
- Presumption of detention for unclassified and Class A felonies, sexual felonies, felony DUI and refusal to submit to chemical testing, and person crimes and DV with certain criminal history
- Data from case file review:
 - 52% of defendants sampled were never released pretrial
 - Majority of defendants sampled with bond of \$500 or more were unable to pay it
 - Only 12% of defendants sampled were released on personal recognizance

Examples of states that have adopted reforms to the pretrial release decision-making process

<p>New Jersey (reforms passed in 2014)</p>	<p>Shift toward risk-based release conditions Statutory changes</p> <ul style="list-style-type: none"> • Mandated pretrial risk assessment • Established a pretrial services agency to: <ol style="list-style-type: none"> 1) assess defendants for risk, 2) make recommendations re: release and conditions, and 3) oversee pretrial services • Required a written explanation on the record if the court departs from the release recommendation • Mandated that the State pay for pretrial electronic monitoring if it is ordered as a condition of release and the defendant is unable to pay <p>Shift away from money bail Constitutional amendment</p> <ul style="list-style-type: none"> • Authorized courts to deny pretrial release for certain offense charges if no release conditions can reasonably assure court appearance and public safety <p>Statutory changes</p> <ul style="list-style-type: none"> • Prohibited financial release conditions that result in pretrial detention • Created due process hearing for denial of pretrial release • Included legislative intent language re: this bill mandates a system of non-monetary release options
---	--

<p>Washington D.C. (reforms passed in 1992)</p>	<p>Shift toward risk-based release conditions</p> <p>Statutory changes</p> <ul style="list-style-type: none"> • Mandated risk assessment and interview within 24 hours • Authorized / mandated pretrial services agency to: <ol style="list-style-type: none"> 1) make recommendations re: release and conditions, 2) monitor compliance with release conditions, 3) provide supervision for high-risk defendants, and 4) make mental health and substance abuse diversion referrals <p>Shift away from money bail</p> <p>Statutory changes</p> <ul style="list-style-type: none"> • Prohibited financial release conditions that result in pretrial detention • Prohibited financial performance bond • Created four options at bail: <ol style="list-style-type: none"> 1) release on personal recognizance, 2) release with conditions, 3) temporarily detain, and 4) detain • Entitled defendant to a review after 24 hours if still detained because of inability to meet release conditions (as opposed to those still detained because they have been ordered detained) <p>Measured outcomes</p> <ul style="list-style-type: none"> • 80% of defendants released without money bond; 5% released with money bond; 15% held without bail • 88% of released defendants appear for all hearings • 88% of released defendants complete pretrial release period without any new arrests
--	---

Kentucky
(reforms passed in 2011)

Shift toward risk-based release conditions

Statutory changes

- Mandated courts to use pretrial risk assessment
- Authorized / mandated pretrial officers to:
 - 1) conduct risk assessment,
 - 2) make recommendations re: release, and
 - 3) develop “risk reduction plan” (individually tailored release conditions) for moderate- and high-risk defendants

Administrative changes

- Adopted a statewide risk assessment tool that does not require a defendant interview, and that scores defendants on:
 - risk of failure to appear,
 - risk of new criminal activity, and
 - risk of new *violent* criminal activity

Shift away from money bail

Statutory changes

- Mandated release on personal recognizance or unsecured bond for low- and moderate-risk defendants; (reserved secured financial bond for high-risk defendants)
- Entitled defendant to review after 24 hours if still detained because of inability to meet release conditions
- Set maximum secured financial bond amount for high-risk defendants charged with only misdemeanors

Diversions

Statutory changes

- Authorized diversion to substance abuse treatment for felony cases

Measured outcomes

- 70% of pretrial defendants released
- 90% of those released appear for all hearings
- 92% of those released complete pretrial release period without any new arrests
- Pretrial jail population down by 279 beds (in the first 6 months of implementation)

Colorado
(reforms passed in 2013)

Shift toward risk-based release conditions

Statutory changes

- Mandated courts to use pretrial risk assessment
- Authorized / mandated pretrial services agency to develop a release decision-making grid based on pretrial risks and charge severity
- Required courts to revise bail schedules to conform with release decision-making grid

Administrative changes

- Developed and validated a statewide pretrial risk assessment tool

Shift away from money bail

Constitutional amendment (pending)

- Would authorize courts to deny pretrial release for a limited list of offense charges when no release conditions can reasonably assure court appearance and public safety

Statutory changes

- Mandated courts to consider alternatives to money bond to avoid unnecessary pretrial incarceration
- Included legislative intent language re: using money bond only as a last resort
- Prohibited financial performance bond
- Permitted bail review hearings focused on inability to pay secured bond

Diversion

Statutory changes

- Authorized diversion programs for certain offense types

Measured outcomes

- Jefferson County (Denver) was first to adopt changes; found no reduction in court appearance or public safety rates

Questions for policy discussion

- What role, if any, should risk assessment play in pretrial decision-making here in Alaska?
- What role, if any, should money play in pretrial decision-making?
- Were there policies from other states that you found particularly appealing?
- What benchmarks would you like to set for the pretrial subgroup to aim for?

Additional policy areas for future discussion

- Third-party custodians
- Presumption of detention in certain cases
- Sanctions for failure to appear
- Diversion programs
- Tribal court / tribal council diversion
- Speedy trial timeline / pretrial delays
- Data collection / outcome monitoring
- Investment into pretrial services and diversion
- Other? ...