

Memorandum

To: The Alaska Criminal Justice Commission
From: Barbara Dunham, Project Attorney
Date: August 18, 2017
RE: Pre-trial Risk Assessment Tool Implementation Fix

Introduction

The Commission held a telephonic meeting on July 5, 2017, to discuss a process for reconciling the newly-developed pre-trial risk assessment tool with the statutes governing release decisions. The tool has two scales with four or five possible outcomes. The statutes were written with the assumption that the tool would have only one scale with three possible outcomes. At the July 5 meeting, the Commission agreed to form an ad-hoc working group to come up with a solution to reconcile the tool with the statutes. Since then, the ad-hoc group has met several times and has developed a solution.

“Clumping” the Scale Outcomes

The scales in the risk assessment tool measure two different things: failure to appear (FTA) and new criminal arrests (NCA). The Crime and Justice Institute (CJI), which developed the tool, found that the FTA scale produced four distinct risk level categories, which they labelled Very Low, Low, Moderate, and High. Similarly, the NCA scale produced five distinct risk level categories, which they labelled Very Low, Low, Moderate, Moderate High, and High.

The statutes that govern judges’ decisions on bail, however, contain just three categories: Low, Moderate, and High. To reconcile the statutory categories with the tool, the ad-hoc group decided to “clump” the scale outcomes together. The following is a summary:

| FTA Tool Outcome | Designation |
|------------------|-------------|
| Very Low | Low |
| Low | Low |
| Moderate | Moderate |
| High | High |

| NCA Tool Outcome | Designation |
|------------------|-------------|
| Very Low | Low |
| Low | Low |
| Moderate | Moderate |
| Moderate High | Moderate |
| High | High |

Using the Two Scales

As noted above, the tool will yield two scores for every defendant: one for risk of NCA and one for risk of FTA. But the statutes contemplate release decisions being made based on one score that combines risk of FTA with risk of NCA. CJI attempted to find a way to combine the scales, but could not do so without severely compromising the tool’s predictive ability. The ad-hoc group therefore had to agree upon which scale would guide both the pre-trial services officer making recommendations for release and the judicial officer making the release decision.

The group decided that the best solution is to use whichever score is higher. That is, the pre-trial services officer will run the calculations for a given defendant for both risk of FTA and NCA. If the result shows that the risk of FTA is higher than the risk of NCA, the FTA score will be used to guide the release decision. If the risk of NCA is higher than the risk of FTA, the NCA score will be used to guide the release decision.

For example, imagine a defendant is assessed as moderate risk for FTA and low risk for NCA. The defendant will be assessed as “moderate” and the pre-trial services officer will, per statute, make a release recommendation based on the “moderate” designation and the crime for which the defendant was charged. Likewise, at arraignment or first appearance, the judicial officer will also make a release decision based on the “moderate” designation and the crime for which the defendant was charged.

Although the ad-hoc group is comfortable with this solution, it also feels that judges and parties should know the defendant’s scores for both FTA and NCA. Thus, the group has asked the Department of Corrections to design a report that shows both scores for each defendant.

Further Considerations

The ad-hoc group believes the solutions above adequately reflect the intent of the statute such that they can be enacted via regulation and new legislation is not necessary. However, the group also feels that the Commission may wish to consider whether amending the statute might be a better or more permanent solution in the long run.