

RECOMMENDATION TO THE ALASKA COURT SYSTEM
FROM THE ALASKA CRIMINAL JUSTICE COMMISSION
Approved March 31, 2015 (#3-2015)

On March 31, 2015, the Alaska Criminal Justice Commission voted to recommend to the Alaska Court System that it provide ongoing judicial education on evidence-based pre-trial practices and principles that can improve how decisions are made in the earliest stages of a case to address the high percentage of pre-trial and unsentenced detainees in Alaska's DOC.

CURRENT LAW AND PROBLEM POSED

Pre-trial detainees are one main factor driving Alaska's prison population growth. The daily average of pretrial or unsentenced offenders has dramatically increased, at a rate that exceeds growth in the number of sentenced offenders. At any given time, unsentenced individuals account for around 40 percent of the ADOC's total population. Unsented individuals include those who are awaiting trial (not convicted), convicted and awaiting sentence, and probationers who have remanded on a Petition to Revoke Probation.

While an offender is in pretrial or unsentenced status, the ADOC is limited to where that person may be housed. This increases the cost of incarceration because inmates are transported from one facility to another trying to keep daily facility inmate counts down below max capacity. Further, most offenders are not eligible for reformative treatment during their pretrial status. [Information taken from *2015 Recidivism Reduction Plan: Cost-Effective Solutions to Slow Prison Population Growth and Reduce Recidivism*, pages 5-7].

Quantitative information about bail conditions of release, bail decision making, and factors that contribute to pretrial detainees' inability to make bail is not readily available in Alaska. In the absence of such information, no firm conclusions can be drawn about why so many unsentenced offenders are detained pending disposition. Nevertheless, Alaska should consider studies from other jurisdictions, which show that defendants who are high-risk and/or violent are often released (in two large jurisdictions examined in detail, nearly half of the highest-risk defendants were released pending trial); and low-risk, non-violent defendants are frequently detained. Other studies show that low-risk defendants who are detained pretrial are more likely to commit new crimes in both the near and long term, more likely to miss their day in court, more likely to be sentenced to jail and prison, and more likely to receive longer sentences. [Information taken from Laura and John Arnold Foundation, *Pretrial Criminal Justice Research*, November 2013, located at: <http://www.pretrial.org/download/featured/Pretrial%20Criminal%20Justice%20Research%20Brief%20-%20LJAF%202013.pdf>].

Effective pretrial decision-making has not been a priority area for judicial education nationally. With the rates of pre-trial detainees in Alaska's DOC rising, it is especially important for judges to become well educated about pretrial justice principles and best practices.

At the Conference of Chief Justices mid-year meeting in Puerto Rico last week, the nation's highest ranking state judicial officers adopted a bold and historic resolution calling upon our state courts to "adopt evidence based pretrial practices" and to "advocate for presumptive non-financial pretrial release."

In the resolution endorsing and commending the recent Conference of State Court Administrators (COSCA) Policy Paper on pretrial justice, the Conference of Chief Justices noted that judicial pretrial decisions, made thousands of times each day, have "significant and sometimes determinative" impact on defendants, dispositions and sentences and on the costs borne by local communities, which must pay for expensive and often needless pretrial detention.

With the passage of this resolution, the Conference of Chief Justices joins with COSCA, the International Association of Chiefs of Police, the Association of Prosecuting Attorneys, the American Council of Chief Defenders, the National Association of Criminal Defense Lawyers, the National Association of Counties and numerous other stakeholder and constituent groups that have answered Attorney General Eric Holder's challenge to establish safe, fair and effective pretrial justice and have publicly called for pretrial reform. *Pre Trial Justice Institute's press release: Conference of Chief Justices Endorse COSCA Policy Paper on Evidence-Based Pretrial Release.*

SOLUTION

The Alaska Criminal justice Commission recommends to the Alaska Court System that it conduct ongoing judicial education to support judicial leaders in moving toward improved pretrial practices.

The National Judicial College and the Pre Trial Justice Institute have developed pretrial justice curricula that can be adapted for statewide judicial education by those involved in planning judicial conferences for presentation – optimally by a mix of experts and sitting judges who have succeeded in achieving reforms – in one-hour to one-day segments at state judicial conferences. Such short programs could focus on key points about the current pre-trial detention situation and viable approaches to implementing improved practices, with examples from peer jurisdictions.

PROJECTED IMPACTS

The projected impacts are: the potential reduction of pretrial and unsentenced detainees through the use of evidence-based bail alternatives and proven practices in other jurisdictions, and the probable reduction in use of hard jail beds for this population.