

**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
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<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
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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? ...