

**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 1<sup>st</sup> degree, endangering the welfare of a child, escape in the 4<sup>th</sup> degree, unlawful evasion in the 2<sup>nd</sup> degree, resisting or interfering with arrest, failure to appear, interfering with a DV report, unlawful contact 1<sup>st</sup> and 2<sup>nd</sup> degree, violating conditions of release, harassment 1<sup>st</sup> degree, criminal possession of an explosive; 2<sup>nd</sup> or subsequent DUI / refusal.
  - **Felony C's:** felony DUI / refusal, burglary 2<sup>nd</sup> degree, escape 3<sup>rd</sup> 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.<sup>1</sup>
- **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?

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<sup>1</sup> 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**

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

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