

Proposed Pretrial Decision Making

- Initial Arrest / Summons decision
 - Is this an issue the task force wants the work group to address?
- Initial Court Hearing / Advisement (day after arrest)
 - Release large majority of defendants with appropriate conditions of release.
 - Temporarily detain small minority until detention hearing.
- Pretrial Detention Hearing (normally w/in 3 days)
 - Detain if charged with detention eligible crime (charge-based net)
 - And if court finds clear and convincing evidence of . . .
- Review and modification of prior decision / revocation of release
 - Review and modification can occur at any time at the request of either party.
 - Release can be revoked if . . .

Expedited Appeal Process

The Proposal Would . . .

- Follow the example of Washington D.C., New Jersey, New Mexico, New Hampshire, and the federal system by Setting up an “in or out,” release / detain, pretrial system.
- Prohibit a defendant from being incarcerated due to inability to pay \$\$\$.
- Prohibit the use of monetary conditions of bond to address public safety.
- NOT eliminate monetary conditions of bond or bondsmen.
- Result in less detention of low risk defendants who have committed low stakes crimes, and will result in the more certain detention of high risk defendants who have committed high stakes crimes.

Initial Arrest / Summons Decision

- Proposal re-writes the current arrest / summons statutes (16-5-206 and 207) and expands summons requirements and authority.
- Divides charges into 3 categories; summons required, arrest required, either arrest or summons allowed per local guidelines or officer discretion.
- Some of the changes are necessary for the remainder of the release / detention proposal.
- Does the task force want the work group to propose this change?

Initial Court Hearing / Advisement

- This will occur the next “business day” after arrest.
- Can be done via audiovisual device in court’s discretion
- Prosecution and Defense Attorney are present.
- Court will release large majority of defendants with appropriate conditions of release.
- Court will temporarily detain those defendants who:
 - Are charged with a detention eligible crime (“charge-based net” – max. 15%), and
 - Those who may be eligible for detention on a prior case (max. 3 days).

Detention Hearing

- Normally w/in 3 days of initial hearing.
- Prosecution has burden of proof. (may call witnesses, or argument)
 - Probable cause for a detention eligible crime, and
 - Clear and convincing evidence of a “substantial risk” to . . . Public safety, court appearance, integrity of judicial process.
 - And Clear and convincing evidence there are no conditions of release that can reasonably assure . . . Public safety, court appearance, integrity of judicial process.
- Defendant’s rights – to sub. witnesses, testify, present evidence, cross X
- Rules of evidence do not apply. Either party may call witnesses, present any information, argument, documents, offer of proof, cross X, etc.
- Court decides if prosecution has met burden.

Review and modification of prior decision / revocation of release

- Either party may ask the court to review a release order, conditions of release, or a detention order at any time if there is new information.
- Prosecution may ask for revocation of release if there is reason to believe the defendant has violated a condition of release.
- Court will hold a hearing to decide whether to:
 - Release defendant (or maintain release) under current conditions of release; or
 - Release defendant under modified / additional conditions of release, or
 - Revoke the defendant's release if:
 - The defendant committed a new crime, or
 - Violated some other condition of release,
 - AND, there are no conditions of release that will reasonably assure . . . Public safety, court appearance, and integrity of judicial system.