

Prosecutor General Concepts for Bail Reform

1. Pretrial release and pretrial detention determinations should be driven by upholding the rights of the accused and the rights of victims, the need to mitigate the public safety or flight risks posed by the accused, and the seriousness of the alleged crimes.
2. The Constitution allows the legislature to determine additional crimes that are eligible for pretrial detention if the State can show by clear and convincing evidence that there is a public safety or flight risk. This category of crimes should include:
 - a. All felonies
 - b. All DV offenses; and
 - c. Certain DUI offenses.
 - d. The Legislature should continue to look at other specific additional offenses.
3. Pre-Charging v. Post-Charging
 - a. The law should separate the pre-charging process for determining pretrial release or pretrial detention from the post-charging process
 - b. The court should give no deference to the pre-charging decision when making the post-charging decision
 - c. The post-charging decision should be able to be appealed by both parties
 - d. The post-charging decision should only be modified if there is a material change in circumstances
4. Pre-Charging - warrantless arrest and pretrial detention:
 - a. When a warrantless arrest is made, there should be a temporary pretrial detention if there is a finding of probable cause for an offense that is eligible for pretrial detention and probable cause for public safety or flight risk
 - b. A Justice Court Judge acting as a magistrate should have the full authority of any magistrate except for Felony Homicide cases
 - c. This temporary detention should automatically expire if the prosecutor does not meet the time periods set forth in URCrP 9 (3 four days with a possible three day extension). This time period should have an additional mechanism for extension for specific violent felonies.
 - d. If the prosecutor does not intend to seek pretrial detention when charges are filed, the prosecutor should affirmatively state this at the time of filing charges and the defendant should be released. This would be best accomplished by requesting a specific pretrial release order at the time charges are filed
 - e. The prosecutor may move for pretrial detention but is not required to if the defendant is already detained under this process
 - f. When the arresting officer or prosecutor states good cause for the temporary pretrial detention, either through the probable cause statement or by motion, all parties, including the victim, should have sufficient time to address the issue of pretrial detention. In some jurisdictions this might be required at the initial appearance because of the infrequency of court appearances. In other jurisdictions where court happens more often, a time period of 7-10 days is more appropriate.
5. Pre-Charging – warrantless arrest and pretrial release:
 - a. Monetary bail should be a tool to mitigate flight risk.

- b. A pretrial status order should include reasonably available and necessary conditions of release to ensure public safety and court appearance
 - c. All parties should be ready to address the initial pretrial status order at the initial appearance
- 6. Post-Charging – summons or arrest warrant:
 - a. the prosecutor should request pretrial release or pretrial detention with the summons or arrest warrant
 - b. This initial pretrial status order should be issued with the summons/arrest warrant
 - c. If the initial request is for bail and/or conditions of release, all parties should be prepared to address these conditions at the initial appearance
 - d. If the initial request is for pretrial detention and the court has found good cause, similar to section 4f above, all parties, including the victim, should have sufficient time to address the issue of pretrial detention. This time may need to vary by jurisdiction and the availability of court hearings.
- 7. Pretrial Detention
 - a. Substantial evidence means evidence that is beyond a scintilla and that a reasonable mind would accept as adequate to support a conclusion. Substantial evidence does not require witness testimony. Needs to include a better definition
 - b. Keep HB220 process for proffer, witnesses, protections for victims
 - c. Presumptions – Homicide, First Degree Felonies, Felony on felony, and any crime where the state shows clear and convincing evidence of public safety or flight risk
 - i. Priority for First Degree Felonies as a presumption
 - ii. Felony Sex Offenses need a presumption, there is no history and they have ties to the community so it is difficult to show danger to the community
 - d. If the State shows clear and convincing evidence of public safety or flight risk then the least restrictive conditions analysis is no longer appropriate
- 8. Bond Forfeiture Proceedings
 - a. Shortened timelines for a bail bond company to secure the presence of the defendant after a failure to appear warrant is issued (90 days instead of six months) from HB206
 - b. State and Local sharing of funds to offset the costs of pretrial services programs
- 9. Modification of Pretrial Status Order
 - a. Pre-trial detention can be ordered any time after the case is initiated if there is a material change in circumstances and the defendant now qualifies for pretrial detention
 - b. A willful failure to appear is a material change in circumstances that allows the court to modify the pretrial status order, up to pretrial detention
 - c. A willful violation of a material condition of release is a material change in circumstances that allows the court to modify the pretrial status order, up to pretrial detention
 - d. Even though a defendant, under the current charges, has a right to bail/pretrial release, a subsequent failure to appear, violation of a material condition of pretrial release, or other condition that affects flight risk or public safety can allow the court to impose pretrial detention
- 10. Counsel should be appointed by the first appearance