

## Alaska's New Pretrial Release System

Starting January 1, 2018, defendants charged with a crime in Alaska's state courts will be subject to a new system of pretrial release. The new system is designed to be fairer, to reduce the criminal justice system's reliance on pretrial detention in cases where it is not warranted, and to maintain or improve public safety outcomes.

### The Old System

In the old system, money bail was used as a proxy for the defendant's risk of flight and risk to public safety if released. Money bail can be generally separated into two types:

- **Secured Bond:** The judge sets an amount of money to be deposited to the court. Cash must be paid up front before the defendant can be released.
- **Unsecured Bond:** The judge sets an amount of money to be deposited to the court. The defendant does not have to pay right away, but if the defendant fails to appear, the defendant owes the amount set.

The Alaska Constitution guarantees a right to bail (to pretrial release) but **judges had a wide latitude in setting money bond**. If a defendant was asked to pay a very large secured bond, it often meant the defendant would stay in jail. So a very dangerous defendant might be asked to pay a secured bond of \$500,000 or more.

Sometimes, however, defendants were unable to pay even a very low amount of bail (say, \$50), meaning they would stay in jail even if a judge did not think they were a great risk to the community. Furthermore, a study by the Alaska Judicial Council showed there were **racial disparities** in defendants who were and were not released before trial.

Defendants in Alaska were also commonly released to a **third-party custodian**—someone who promises the court that they will watch the defendant 24/7 and report back if the defendant leaves or violates conditions of release. There are also private electronic monitoring companies that would act as a kind of third-party custodian. There was not, however, any state-run monitoring service.

### The New Release 'Grid'

Judges must now release defendants according to their risk level and the type of crime charged. When a defendant is arrested and brought to jail, the new **Pretrial Enforcement Division** (a branch of the Department of Corrections) will conduct a risk assessment of that defendant using a tool developed specifically for Alaska.

The risk assessment accounts for a number of factors and gives the defendant two scores which indicate whether they are **low, moderate, or high risk** for both **failure to appear** for court or **new criminal arrests** once released. The Pretrial Enforcement Division makes this information available to the prosecutors, the defense attorneys, and the courts before the defendant has an arraignment or first appearance.<sup>1</sup>

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<sup>1</sup> More details on the tool itself can be found here: <http://www.correct.state.ak.us/pretrial/assessment-tool>. The tool produces two scores, one for risk of failure to appear (FTA) and one for risk of new criminal arrests (NCA). The

A judge will then look at the defendant’s assessed risk level and the crime charged, and make a release decision according to the statute: **AS 12.30.011** (S.B. 91 section 59). The following grid summarizes the statute.

**Judicial Release Decision Grid**

	Misdemeanors [exceptions <sup>2</sup> ]	Class C felonies [exceptions <sup>3</sup> ]	DUI/refusal	FTA/VCOR	Other
Low-risk	Mandatory OR	Mandatory OR	Presumptive OR	Presumptive OR	Presumptive OR
Mod-risk	Mandatory OR	Presumptive OR	Presumptive OR	Presumptive OR	No Presumption
High-risk	Presumptive OR	Presumptive OR	Presumptive OR	No Presumption	No Presumption

Terms explained:

- **Mandatory OR:** The defendant must be released on recognizance or on unsecured bond.
- **Presumptive OR:** The defendant must be released on recognizance or on unsecured bond, unless the judge finds clear and convincing evidence that no combination of release conditions with recognizance release or unsecured bond can reasonably ensure appearance in court and public safety. If the judge makes this finding on the record, secured money bond is authorized.
- **No Presumption:** Secured money bond is authorized. The court may still release the defendant on recognizance or on unsecured bond.
- **DUI/refusal:** Driving under the influence or refusal to submit to a chemical test.
- **FTA/VCOR:** Failure to appear in court or violation of a condition of pretrial release.
- **Other:** Class B or higher felony charges, as well as all other charges that fall under an exception enumerated in the statute and that are not listed in another column, such as sex offenses, offenses against a person, and domestic violence offenses.

Thus, under the new system, a person who is low risk and charged with a misdemeanor such as trespassing will be released on their own recognizance; they do not have to pay money bond, but must abide any conditions of release set by the judge.

Someone who is charged with a serious crime may still have to pay a money bond. If they are assessed as low risk, a judge may order a secured money bond if the judge makes certain findings as specified in statute. A judge may skip this step if the person is assessed as moderate or high risk. Thus a defendant charged with sexual assault who is assessed as high risk may be asked to pay a \$500,000 secured bond.

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score that controls is the higher of the two. Thus, a person who is low risk for FTA but moderate risk for NCA will be considered a moderate risk for purposes of the grid.

<sup>2</sup> Exceptions: person offenses, sex offenses, domestic violence offenses, driving under the influence / refusal to submit to a chemical test, failure to appear in court, violation of a condition of release.

<sup>3</sup> Exceptions: person offenses, sex offenses, domestic violence offenses, driving under the influence / refusal to submit to a chemical test, failure to appear in court, violation of a condition of release.

In all cases, judges must require the defendant to obey all laws and court orders and maintain contact with the defendant's attorney and Pretrial Enforcement Officer (if assigned to supervision). The judge may set additional conditions such as remaining alcohol-free, complying with travel restrictions, and maintaining employment.

## Pretrial Supervision

The Pretrial Enforcement Division also has trained **Pretrial Enforcement Officers** who may be assigned to **supervise or monitor defendants**. These officers may monitor defendants using electronic monitoring if it is ordered by the court; they may also require regular check-ins like probation officers. The level of supervision will depend on the defendant's risk level and needs. In places where the Pretrial Enforcement Division is unable to provide supervision, the court may authorize supervision by third-party custodians.

## Summary

### What's new:

- Supervision by Pretrial Enforcement Officers
- Risk assessment scores
- Release decisions based on risk
- Reduced use of money bonds, especially in cases where releasing the defendant poses less risk to the community
- Very little use of third-party custodians

### What's not new:

- Judicial discretion to impose non-monetary conditions of release
- Input from prosecutors, defense attorneys, and victims
- Large secured bonds allowed in cases where the defendant has been charged with a serious crime and releasing the defendant poses a substantial risk to the community.

## More information

Website for the Pretrial Enforcement Division, including FAQs and contact information:

<http://www.correct.state.ak.us/pretrial>

Website for the Alaska Criminal Justice Commission (resources on bail and pretrial release):

<http://www.ajc.state.ak.us/alaska-criminal-justice-commission/resource-list-compiled-by-commission-staff>

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