

MEMORANDUM

RE: Office Policy on Bail Determinations – Elimination of Prosecutors' Recommendation of Secured Bonds

Effective January 1, 2019, it is the policy of this Office that our prosecutors will not recommend or agree to secured bonds in the cases that we prosecute.

Our fundamental position on pretrial release has always been this: Individuals who pose a danger to the community or an undue risk of flight should be held in custody pending trial. Individuals who do not pose a danger to the community or an undue risk of flight should be released pending trial.

In assessing danger to the community or risk of flight we examine each case in light of the time-honored and logical principles in Virginia Code §§ 19.2-120 through 19.2-123 in conjunction with the Virginia Pretrial Risk Assessment Instrument, a nationally respected model.

In the past we have recommended secured bonds in certain cases where the individual charged merited pretrial release. In those cases, our recommendation for secured bonds disadvantaged indigent individuals, many of whom posted secured bonds at a great financial hardship to themselves or their families. Others were simply unable to afford to pay their bonds and, though otherwise eligible for release and presumed to be innocent, remained in custody prior to trial. Similarly situated, non-indigent individuals could post secured bonds without suffering those ill effects.

This financially-based difference in pretrial outcomes is not just. For that reason, for individuals who merit pretrial release, our office will recommend release on an unsecured bond and, where appropriate, release conditions and/or pretrial supervision by Adult Community Services.

Application of this rule is simple. If in the past we would have recommended detention, we will now do the same thing. If in the past we would have recommended a secured bond, with or without conditions, we will now recommend an unsecured bond, with or without conditions, in its place.

Nothing in our policy affects the discretion of magistrates or judges to set the bail conditions they see fit, including secured bonds.

To provide an evidence-based assessment of the policy, we have partnered with faculty members from the Sociology and Criminal Justice Department at Old Dominion University to study the impact of the policy over the first year. Researchers will work with various agencies and divisions to collect and analyze data to address two primary questions. First, whether the policy has the desired effect of reducing the number of individuals receiving cash bail without an increased rate of pre-trial incarceration. Second, whether there are unintended consequences of the policy, desirable or not, such as: 1) increased rate of Failure to Appear,

2) increased rate of new offenses while out on pre-trial release, and 3) changes in the number of cases that result in guilty pleas, dismissals, or motions *nolle prosequi*.

To reiterate: Our office will vigorously advocate for the pretrial detention of those individuals who pose a danger to the community or an undue risk of flight. Our office will do justice by ensuring that the pretrial release of the majority of charged individuals is based on the facts of their case and not on their ability to pay.