

45.5 a. Alternative Release with Supervision

(1) There should be a presumption that the defendant is entitled to be released on order to appear or on personal recognizance. This release should require no bail but will be on condition of supervision as deemed necessary by the court. The presumption may be overcome by a finding that there is substantial risk of non-appearance. In capital cases, the defendant should not be eligible for release with supervision.

(2) In determining where there is a substantial risk of non-appearance, it is recommended that the judicial officer take into account the following factors concerning the defendant:

- (a) The length of residence in the community;
- (b) Employment status and history and financial condition;
- (c) Family ties and relationships;
- (d) Reputation, character, and mental condition;
- (e) Past history of response to legal process;
- (f) Prior criminal record;
- (g) The likelihood that the defendant will commit another crime while awaiting trial in the present case;
- (h) Identification of responsible members of the community who would vouch for the defendant's reliability;
- (i) Nature of the current charge(s), the probability of convictions, and the possible sentence, insofar as these factors are relevant to the risk of non-appearance; and
- (j) Any other factors indicating the defendant's ties to the community.

(3) In the event the judicial officer determines that release on order to appear or on personal recognizance is unwarranted, the judicial officer should include in the record a statement of the reasons but should not include information believed by the prosecutor to be confidential.

(4) Defendants released under supervision should be required to waive their right to challenge extradition in the event they leave the jurisdiction without judicial permission.

b. Levels of Supervision

(1) In determining the type of supervision for each defendant, the judicial officer should impose the least onerous condition reasonably likely to assure the defendant's appearance in court.

(2) Where conditions on release are found necessary, the judicial officer should impose one or more of the following conditions:

- (a) Require that the defendant make periodic telephone calls to the court to inform the court of current status;
- (b) Require that the defendant make periodic visits to court to inform the court to current status;
- (c) Release the defendant into the care of some qualified person or organization responsible for supervising the defendant and assisting in appearing in court. Such supervisory would be expected to maintain close contact with the defendant, to assist in making arrangements to appear in court, and, where appropriate, to accompany the defendant to court;

(d) Place the defendant under the supervision of a probation officer or other appropriate public official;

(d) Impose reasonable restrictions on the activities, movements, associations, and residences of the defendant;

(f) Where permitted by law, release the defendant during working hours but require the defendant to return to custody at specified times; or

(g) Impose any other reasonable restriction designed to assure the defendant's appearance and the safety of others.

(3) Supervision of defendants released without bail should be conducted by employees of the court. Adequate funds should be provided to ensure a staff of qualified persons to perform this task.