

EBDM FELONY CUSTODIAL ARREST AND PRETRIAL RELEASE PROGRAM

FELONY CUSTODIAL ARREST

One of the specific ways in which law enforcement officers will utilize a Proxy is to obtain guidance when making felony custodial arrest decisions. We have agreed that a felony custodial arrest of a low-risk individual will only be made if one or more of the following Wisconsin Supreme Court bond factors are present:

1. The accused does not have proper identification;
2. The accused appears to represent a danger of harm to himself or herself, another person or property;
3. The accused cannot show sufficient evidence of ties to the community;
4. The accused has previously failed to appear in court or failed to respond to a citation, and;
5. Arrest or further detention is necessary to carry out legitimate investigative action in accordance with law enforcement agency policies.

It should be noted that law enforcement officers may exercise their discretion and not make a felony custodial arrest of an individual even if one of these bond factors is present. For example, an individual may have previously failed to respond to a citation and not be subject to a felony custodial arrest because the failure to appear is explainable or occurred sufficiently in the past. The pertinent point is that for individuals shown to be low risk on the Proxy, felony custodial arrests will not occur unless at a minimum one or more of those bond factors are present.

The rationale for this particular aspect of our EBDM program is that arresting and incarcerating low-risk individuals may negatively impact them by unnecessarily exposing them to medium and high-risk individuals who will be also incarcerated. Research indicates that low-risk individuals tend to be negatively influenced by exposure to medium or high-risk individuals, as opposed to the medium or high-risk individuals being positively influenced. Additionally, incarceration of low-risk individuals may interfere with the influences, which make them largely self-correcting. Consequently, absent sufficient compelling reasons, low-risk individuals will not be subject to felony custodial arrest under our EBDM Program.

CASH BOND REVIEW

The second portion of our EBDM custodial arrest and pre-trial release program involves the review of cash bond decisions after completion of a COMPAS. Under this process, cash bond arguments and decisions will occur at the initial appearance in criminal cases just as they have occurred under our pre-EBDM system. However, the situation of any individual held in custody on a cash bond will be reviewed by Jail Assessment Coordinator. Unless it is apparent that the status of the required cash bond will not be changed because of the overwhelming seriousness of an offense, such as in cases involving charges of First Degree Intentional Homicide, the Assessment Coordinator will offer to complete the risk to appear portion of the COMPAS. If that offer is accepted by the defense attorney or pro se defendant, the results of the risk to appear portion of the COMPAS will be shared with both parties and the court.

We have agreed that the Assessment Coordinator will review the status of individuals held on cash bond and, if appropriate, complete the required portion of the COMPAS within two working days of the court appearance during which the cash bond was set. Once that risk to appear portion of the COMPAS has been completed, it will be the responsibility of the defense attorney or pro se defendant to request a review hearing in intake court. That review hearing will be scheduled within two working days.

The purpose of this portion of our EBDM program is to ensure that individuals, particularly low-risk individuals, are only held in custody on cash bond if relevant circumstances warrant that custody. The researched-based information provided by the COMPAS will provide both the parties and the court with the best possible information regarding the necessity for a cash bond.

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