

POLICE POWERS OF RELEASE: Training Materials

Version: 03.14.20 (post-Bill C-75)

MINISTRY OF THE ATTORNEY GENERAL

***NOTE: TRAINING TO BE DELIVERED BY CROWNS –
NOT FOR STAND-ALONE USE***

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What We Will Cover

1. Overview of bail principles
2. Options for release by police – the ladder principle
 - (a) Appearance notice for judicial referral hearing (s. 496)
 - (b) Release from scene by arresting officer (ss. 496 - 497)
 - (c) Arrest without a warrant (s. 498)
 - (d) Arrest with a warrant (s. 499)
 - (e) The rest (ss. 501 - 503)
3. Youth Releases
4. Release Documents
5. Crown Bail Directive
6. Practical Reminders
7. Scenarios

NEW refers to amendments in Bill C-75 (in force on **December 18, 2019**)

The Ministry of the Attorney General (MAG) & the Ministry of Community Safety and Correctional Services (now called the Ministry of the Solicitor General, or SolGen) commissioned a report on bail and remand that was released in early 2017 (the Wyant Report). That report recognized that too many accused are on remand awaiting a bail determination, and set out recommendations to improve bail and remand in Ontario, including:

- the expansion of education for police on their powers of release

<https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/wyant/>

1. OVERVIEW OF BAIL PRINCIPLES

R. v. Antic, 2017 SCC 27

“The right not to be denied reasonable bail without just cause is an essential element of an enlightened criminal justice system. It entrenches the effect of the presumption of innocence at the pre-trial stage of the criminal trial process and safeguards the liberty of the accused persons. The right has two aspects: a person charged with an offence has the right not to be denied bail without just cause and the right to reasonable bail”

Where to Start

- The decision of whether or not to release an accused person pending trial, and on what conditions, is one of the most significant decisions made in the criminal process
- The decision making starts with the police
- The *Charter* guarantees that an accused not be denied reasonable bail without just cause – section 11(e)

NEW Principle of Restraint

- Newly codified (in force on December 18, 2019)
- s. 493.1: a peace officer...*shall give primary consideration to the release of the accused at the earliest reasonable opportunity and on the least onerous conditions that are appropriate in the circumstances, including conditions that are reasonably practicable for the accused to comply with*

NEW Aboriginal Accused or Vulnerable Populations

- s. 493.2: a peace officer....*shall give particular attention* to the circumstances of:
 - a) Aboriginal accused; and
 - b) accused who belong to a vulnerable population that is overrepresented in the criminal justice system and that is disadvantaged in obtaining release under this Part.

2. OPTIONS FOR RELEASE

- The ladder principle sets out the options for judicial pre-trial release of an accused
- Legal presumption is that an accused will be released on a release order without conditions (formerly called an undertaking)
- Unless it is demonstrated that a more onerous form of release is required

R. v. Antic, 2017 SCC 27, para 67

NEW The Ladder



- A central part of the Canadian law of bail consists of the ladder principle and the authorized forms of release, which are found in s. 515(1) to (3) of the *Criminal Code*
- Release on a release order without conditions is the default position
- Alternative forms of release are to be imposed in accordance with the ladder principle
- Release is favoured at the earliest reasonable opportunity and on the least onerous grounds

R. v. Antic, 2017 SCC 27

Who should be released?

- For most offences the starting point is that the accused person should be released on bail
- Consider if there is any reason not to release the person.
Bail decisions are an exercise in risk management
- It is not practical (or legal) to hold everyone in an effort to guarantee that an accused person will not reoffend

R. v. Van, 2014 ONCJ 232

Who should be released?

- The power to release or detain requires assessment of the facts of each individual case
- Consider the criminal record of the accused and grounds for detention (primary and secondary grounds)
- Avoid passing the buck - consider all options available to you for release before moving to next step on the bail ladder

Reasonable Bail

“...the right to reasonable bail, relates to the terms of bail, including the quantum of any monetary component and other restrictions that are imposed on the accused for the release period. It protects accused persons from conditions and forms of release that are unreasonable”

R. v. Antic, 2017 SCC 27

What are the Options for Release?

(a) **NEW** Appearance notice for judicial referral hearing (s. 496)

- If a peace officer has reasonable grounds to believe that a person has failed to comply with a release (summons, appearance notice, undertaking or release order) **or** to attend court as required **and** that the failure did not:
 - cause a victim physical or emotional harm,
 - property damage or
 - economic loss,the peace officer **may**, without laying a charge, issue an appearance notice to the person to appear at the judicial referral hearing under s. 523.1

NEW Judicial Referral Hearings

- s. 523.1: creates a new proceeding designed to reduce the number of administration of justice (AOJ) charges.
- It allows police (and crowns, if a charge is laid by police) to refer an accused to a hearing if he:
 - has breached a condition of release OR
 - failed to attend court or for fingerprints WHEN
 - there has been no harm caused to a victim, property damage or economic loss.
- Note: not available for breaches of disposition (i.e. probation, conditional sentence order)
- If this procedure is used, no charge is laid by police (or if laid by police and referred to a hearing by a crown, the charge is dismissed)
- The justice or judge hearing the matter has various options under this section: take no action; cancel the release(s) and issue a new one, or detain the accused; or remand the accused into custody for the purposes of the *Identification of Criminals Act*

NEW Judicial Referral Hearings

- The JRH process has the potential to be time consuming and resource intensive
- Consider all other available options before referring to JRH
- Exercise your discretion when investigating failures to comply and to appear
- Adult accused:
 - Don't charge
 - Lay a criminal charge
- If decision is made to refer to a JRH, issue an appearance notice under s.496 (NEW)
- For a JRH to proceed, the Prosecutor must “seek a decision under the section”

NEW Judicial Referral Hearings: YCJA

- Consider all other available options before referring to JRH
- **NEW** s. 4.1 YCJA: EJM are presumed to be adequate to address failures to comply/appear captured by the JRH provision unless:
 - YP has a history of repetitive failures or refusals
 - Failure or refusal has caused harm, or a risk of harm to the safety of the public
- Police options, to be considered in this order:
 - Take no action
 - Give a warning
 - Administer a caution or refer the YP to a community program that may assist the YP not to commit offences (YP's consent required)
 - Refer the YP to a JRH
 - Lay a criminal charge
- If decision is made to refer to a JRH, issue an appearance notice under s.496 (**NEW**)
- For a JRH to proceed, the Prosecutor must “seek a decision under the section”

NEW Judicial Referral Hearings

- *Details of protocol will vary by region, each police service should liaise with their local Crown Attorney's office*
- In all cases of police referral to a JRH, the referring officer **MUST:**
 - Issue an Appearance Notice (s. 496), to the appropriate courtroom, day and time established in your region
 - Prepare "JRH brief"
 - "JRH brief" to contain:
 - summary of the allegations,
 - copies of the relevant officer's notes, underlying information(s) and release order(s), and
 - criminal record of the accused, if any
 - Provide the "JRH brief" to the Crown's office in advance of the hearing date
 - Prepare a Notice of Application (NOA) or "bring forward" form (or a form agreed to in your region), identifying all relevant information number(s) and next court date(s)
 - Attach Appearance Notice to the NOA/bring forward form (or agreed form) and deliver to the Clerk's office to ensure the matter is added to the docket for the date on the Appearance Notice AND deliver a copy of all filed documents to the Crown's office

NEW Appearance Notice

(b) Issue of appearance notice by peace officer (s. 497)

- If a peace officer does not arrest a person, they may issue an appearance notice (no conditions) to the person if the offence is:
 - a) An indictable offence mentioned in s. 533;
 - b) An offence for which the person may be prosecuted by indictment or for which they are punishable on summary conviction; or
 - c) An offence punishable on summary conviction.

Less Serious Offences (s. 497)

- (a) Indictable offences for which the OCJ has absolute jurisdiction (s. 533). Includes:
- *property offences under \$5000,*
 - *attempts and conspiracies,*
 - *gaming & betting,*
 - *breach of recognizance (s. 811),*
 - *failure to comply with probation (s. 733.1),*
 - *simple possession of schedule II (CDSA s. 4(4)(a)),*
 - *trafficking schedule II < prescribed amount (CDSA s. 5(3)(a.1))*
- (b) All hybrid offences
- (c) All summary conviction offences

NEW Appearance Notice (s. 500(1))

- An appearance notice shall (Form 9)
 - a) set out the name, date of birth and contact information of the accused;
 - b) Set out the substance of the offence that the accused is alleged to have committed;
 - c) Require the accused attend court at a time and place to be stated in the notice and to attend afterwards as required by the court; and
 - d) Indicate if the accused is required to appear at a JRH.

NEW Release by a Peace Officer

- Authority comes from sections 498, 499 & 503 of the *Criminal Code*

s. 498 – Arrest without a warrant

- Shall release unless...

s. 499 – Arrest with a Warrant

- May or may not release even if warrant endorsed for release
- May not release if warrant unendorsed
- Release is on an appearance notice or undertaking to the peace officer

s. 503 – Most other offences

- Shall detain and bring to a justice unless decision made to release

(c) **NEW** Arrest without a Warrant (s. 498)

- Person arrested without a warrant by a peace officer
for
 - An offence (other than s. 469 offences)
- **and**
- Has **not** been taken before a justice or release from custody under any other provision

“Shall Release” (s. 498)

Presumption under s. 498 is that the accused person shall be released

If a person has not been taken before a justice or otherwise been released, the officer **MUST** release that person as soon as practicable:

- a) With the intention of compelling to court by summons;
- b) On an appearance notice;
 - Contents found in s. 500(1)/Form 9 (NEW)
- c) On an undertaking to the peace officer.
 - Contents and conditions found in s. 501(1)-(3)/Form 10 (NEW)

“... as soon as practicable...”

What does this mean?

- s. 498 allows you to wait until it's practical to release the person.
- May include:
 - weather conditions
 - level of intoxication
 - physical condition
 - mental condition
 - presence of family or friend

Also consider the state of the investigation. Does s. 516(1) apply – seeking a 3-day remand in custody?

s. 516(1)

- When an investigation is on-going and the investigator requires more time to continue or conclude a vital part of the investigation (example: interviewing principle witnesses, seize vital evidence etc.), the Crown can make an application to the court to delay the bail hearing for up to 3 clear days pursuant to 516(1)
- The accused must be charged with at least one offence and must be present at court for the application to be made
- Adjournment should be for the shortest amount of time required in the circumstances
- Final decision made by Justice or Judge

NEW When should you not release? (s. 498(1.1))

- The presumption under s. 498 is that they shall be released.
- NEW However, the peace officer shall not release if they believe on reasonable grounds that:

(1) If released the person will fail to attend court
(*primary ground concern*) – s. 498(1.1)(b)

NEW When should you not release? (s. 498(1.1))

(2) It is necessary in the public interest that the person be detained in custody or that the release from custody should be dealt with by other means (bail) having regard to all circumstances including the need to.....

- Establish identity of the person
- Secure or preserve evidence of or relating to the offence
- Prevent the continuation or repetition of the offence or the continuation of another offence
- Ensure the safety or security of any victim or witness to the offence

(secondary grounds) – s. 498(1.1)(a)

NEW When should you not release? (s.498(1.1))

- (3) Where a person has been arrested without a warrant by a peace officer for an indictable offence alleged to have been committed in a different province

(see section 503(3) - 6 day remand procedure)

(d) Arrest with a Warrant (s.499)

- An accused arrested pursuant to a warrant **and** the warrant is endorsed by a justice under s. 507(6), a peace officer **may** release the person if:
 - Issues an appearance notice; or
 - Contents found in s. 500(1)/Form 9 **(NEW)**
 - Person gives an undertaking to the peace officer.
 - Contents and conditions found in s. 501(1)-(3)/Form 10 **(NEW)**
- If the warrant is endorsed, a peace officer may exercise his/her discretion to release from station
 - You don't have to release if warrant is endorsed, but you can
- Includes bench warrants, warrants in the first

Arrest with a Warrant (s. 499)

Consider.....

- What is the risk posed by this accused?
- Can conditions be fashioned which will minimize the risk to an acceptable level?
 - Expanded list of conditions available to all peace officers
 - Reduce the number of accused held for bail hearings
- Warrant in the First or Bench Warrant?
- Is the warrant endorsed?
 - Endorsement permits the officer to use his/her discretion concerning release

Arrest with a Warrant (s. 499)

Consider.....

- Is the accused charged with a serious offence?
- Has the accused been avoiding contact with police?
- Does the accused have a history of FTA or non-compliance?
- Does the accused have other outstanding charges?
- Is the accused charged with an offence which garners mandatory minimum penalties (MMP)?
- Is the accused involved in Drug Treatment Court (DTC)?
- How long has the warrant been outstanding?

Cannot Release (s. 469)

- treason
- alarming Her Majesty
- intimidating Parliament or legislature
- inciting to mutiny
- piracy
- piratical acts
- murder
- accessory after the fact to high treason or treason or murder
- bribery by the holder of a judicial office
- crimes against humanity
- attempting to commit any offence mentioned above
- conspiring to commit any offence mentioned above

(e) **NEW** Section 503 - Shall Bring to Justice unless...

- Person **must** be brought before a Justice within 24 hours unless released
 - 24 hours is the outer limit of what is a reasonable period
 - Police must take the accused before a JP without unreasonable delay
- **NEW** Section 503(1.1) also requires that a peace officer who no longer considers the continued detention necessary to release the person on:
 - An appearance notice, or
 - **NEW** Contents found in s. 500(1)/Form 9
 - An undertaking to the peace officer.
 - **NEW** Contents and conditions found in s. 501(1)-(3)/Form 10

Conditions of Release

- Recall the principle of restraint in s. 493.1 (NEW):
 - least onerous conditions that are appropriate in the circumstances, and
 - reasonably practicable for accused to comply with
- Release conditions should always relate to the specific circumstances of the accused and the offence
- Conditions should be realistic - the accused should be able to comply with the condition
 - For example, a condition requiring a homeless or mentally ill person to report to police weekly or monthly may be virtually impossible for them to comply with
 - Consider whether an alcohol or drug prohibition is necessary – it will likely be impossible for an addict to comply with such a condition
 - now only available under residual catch-all condition IF it is reasonable and necessary and required to ensure the safety and security of a victim/witness

NEW Conditions: Undertaking to a PO (s. 501)

- **MANDATORY CONDITIONS** (s. 501(2)):
 - Attend court at time and place stated
 - Attend court thereafter as required by the court
- **ADDITIONAL CONDITIONS** (s.501(3)) can only be imposed if:
 - *Reasonable* in the circumstances of the offence
 - AND
 - *Necessary* to:
 - Ensure the accused's attendance in court
 - OR
 - The safety and security of any victim of or witness to the offence
 - OR
 - To prevent the continuation or repetition of the offence or the commission of another offence

NEW Additional Conditions s. 501(3)

- Report at specified times to peace officer or other specified person
- Remain with a specified territorial jurisdiction
- Notify the PO or other specified person of any change in address, employment or occupation
- Abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the undertaking, except in accordance with any specified conditions
- Abstain from going to any specified place or entering into any geographic area related to any person referred to in non-communication order, except in accordance with any specified conditions
- **NEW** Deposit all their passports with PO
- **NEW** Reside at specified address, be at that address at specified hours and present themselves at the entrance of that residence to a PO/specified person, at the officer's or specified person's request during those hours
- Abstain from possessing firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance (**NEW**) and surrender those in their possession to peace officer/specified person, including authorization/license

***RECALL THE PRINCIPLE OF RESTRAINT: JUST BECAUSE MORE CONDITIONS ARE AVAILABLE IT DOES NOT MEAN THEY SHOULD BE IMPOSED.**

(least onerous conditions that are appropriate in the circumstances, reasonably practicable for accused to comply with)

NEW Conditions: Undertaking to a PO (s. 501)

CAN ALSO INCLUDE:

- Promise to pay: < \$500 without surety or deposit; **or**
- Deposit to a peace officer specified in the undertaking (<\$500) , if accused is not ordinarily resident in the province or within 200km

BUT NO LONGER INCLUDES:

- Abstain from:
 - consumption of alcohol or other intoxicating substances, or
 - Consumption of drugs except in accordance with a medical prescription

....BUT STILL INCLUDES:

- Comply with any other specified condition for ensuring the *safety* and *security* of any *victim* of, or *witness* to, the offence

NEW Release Conditions – s.501(3)(a)

To report at the times specified to a peace officer or other specified person

Consider:

- Is there reason to believe that the accused will leave the jurisdiction, or is not living in a stable residence?
- Also consider whether this is a condition that the accused can realistically comply with, specifically in cases with a homeless and/or mentally ill accused

NEW Release Conditions – s. 501(3)(b)

To remain within a territorial jurisdiction specified in the undertaking

“Remain in the City of Ottawa”

Consider:

- Is there reason to believe that the accused will leave the jurisdiction, and NOT RETURN for their court date?

Yes – primary ground concern exists, send to bail court

No – no reason for this condition

NEW Release Conditions – s. 501(3)(c)

To notify a peace officer or another person mentioned in the undertaking of any change in his or her address, employment or occupation

Consider:

- Whether we will need to know where the accused is living for service or compliance purposes
- Whether the accused is capable of complying with this condition – accused who are homeless, mentally ill, or addicted may have great difficulty complying with this condition

NEW Release Conditions – s.501(3)(d)(e)

(d) To abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the undertaking except in accordance with conditions specified in the undertaking

(e) To abstain from going to any specified place or entering any geographic area related to any person referred to in (d), except in accordance with conditions specified in the undertaking

Consider:

- Are there any people who the accused should not be able to contact?
- Includes victims, witnesses, co-accused

Yes – use correct spelling of names and confirm addresses

No – no reason for this condition

New Release Conditions – s.501(3)(f)

To deposit **all** the person's passports with the peace officer or other person mentioned in the undertaking

Consider:

- Is there reason to believe that the accused will use his/her passport to leave Canada and not return?

Yes – primary ground concerns, send to bail court

No – no reason for this condition

New Release Conditions – s.501(3)(g)

Reside at a specified address, be at that address at specified hours and present themselves at the entrance of that residence to a peace officer or other specified person, at the officer's or specified person's request during those hours

Consider:

- Whether we will need to know where the accused at an address, at specified times for service or compliance purposes
- Whether the accused is capable of complying with this condition – accused who are homeless, mentally ill, or addicted may have great difficulty complying with this condition

NEW Release Conditions – s.501(3)(h)

Abstain from possessing firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance (**NEW**) and surrender those in their possession to peace officer/specified person, including authorization/license

Consider:

- Is this an offence of violence or threats of violence or weapons?
- See also: s. 515(4.1)

...not to possess any weapons including knives and cross-bows...

Consider:

- Whether the offence involved violence or threats of violence or weapons

Yes – include this condition in your release

No – no reason for this condition

NEW Additional Release Conditions – s.501(3)(k)

To comply with any other specified condition for ensuring the *safety* and *security* of any *victim* of or *witness* to the offence

- Any conditions included in an Undertaking must be directly related to circumstances of the offence, justified and reasonable

Before including any additional conditions ask:

- Is the condition directly related to the alleged offence?
- Is the condition required to protect the safety of any victim or witness?
- Is a condition related to abstaining from the consumption of drugs and/or alcohol appropriately imposed under this section? **No longer authorized by the Code** unless the criteria in this section apply.
- Recall the principle of restraint in s. 493.1 (NEW): least onerous conditions that are appropriate in the circumstances, reasonably practicable for accused to comply with

Commonly imposed, but not legally available (in most cases):

- Do not possess tools
- Do not possess cell phones, pagers etc.
- Do not associate with persons known to you to have a criminal record
- Do not be in a motor vehicle without the owner present
- Keep the peace and be of good behaviour

These conditions cannot be imposed under s. 501(3)(k) (NEW), unless they are required to ensure the safety and security of a victim or witness AND are:

- *Reasonable in the circumstances of the offence*
- *Necessary*

Release Conditions – Effective Period

- All conditions remain in effect until the final disposition of the associated charges or judicial variation
- If there are conditions given without authority the court will likely not uphold a breach

Release Conditions Intimate Partner Violence (IPV)

- IPV (formerly domestic violence) charges do not bar an accused from a release from the station
- Consideration should be given to the specific circumstances, on a case by case basis

In cases involving children:

- CAS must be advised in every case where children can be expected to be present in the home
 - Children do not have to be present at the time of the offence or ordinarily resident in the home

NEW All Peace Officers

- Record why you decided to release:
 - What principles you considered?
 - What risks you perceived?
 - How the conditions you used would mitigate those risks?
- Record why you decided to detain for a bail hearing:
 - Why you thought you could not mitigate the risks with the conditions available?
 - Remember, these have been expanded in s. 501(3) (NEW)
- Remember that you may be called to give evidence in court or at an inquest concerning the release or detention of an accused person
 - You might be asked to explain your decision to release or detain the accused person and, if released, the rationale behind the release conditions

NEW Reverse Onus – s.515(6)

- An accused is in a reverse onus position and must “show cause” why he should be released when charged with:
 - An indictable offence committed while out on another release for an indictable offence
 - Certain criminal organization and terrorism offences
 - Enumerated offences under the *Security of Information Act*
 - Trafficking or import/exporting firearms
 - Enumerated offences when committed with a firearm (including attempted murder, aggravated sexual assault, robbery, extortion)
 - Any offence involving a firearm, crossbow, prohibited or restricted weapon, prohibited device or ammunition **when** accused is subject to a prohibition order under section 84(1) of the *Criminal Code*
 - An indictable offence and not ordinarily resident
 - An offence in the commission of which violence was used, threatened or attempted against their intimate partner AND the accused has been previously convicted of an offence in which violence was used, threatened or attempted against ANY intimate partner of theirs (NEW)
 - Fail to appear, fail to comply with recognizance or other form of release
 - An offence punishable by life under any of sections 5 to 7 of CDSA

NEW Reverse Onus – s.515(6)

- The *Criminal Code* does not prohibit police from releasing an accused from the station (for non-469 offences) in a reverse onus situation
- Police should pay close attention to the provisions of s.498 (1.1)(a) before deciding to hold a reverse onus case for a bail hearing
- Detention may very well be warranted but should not be automatic but rather the result of a careful application of the principles in s.498 (1.1)
- Crowns will not automatically seek detention of an accused in a reverse onus position
- Crown bail directive recognizes that the obligation to follow the ladder principle continues to exist in reverse onus situations

Administration of Justice (AOJ) Offences

- Includes fail to appear, fail to comply with condition of release, fail to comply with probation
- Dramatic increase in number of AOJ offences being charged and prosecuted in Ontario
- Consider whether it is appropriate to use your discretion and *not charge* all AOJ offences
- **Consider:**
 - The seriousness of the alleged breach
 - Any apparent reason for the breach
 - The underlying facts
 - Whether any physical or emotional harm, property damage or economic loss to victim

3. Youth Releases

- Sections 28 – 33 of the *YCJA*
- Part XVI of the *Criminal Code* still applies
- *s. 28.1: Substitute for Social Measure is prohibited.
 - “A peace officer (NEW), youth court justice or judge shall not detain a young person in custody, or impose a condition in respect of a young person’s release by including it in an undertaking or release order, as a substitute for appropriate child protection, mental health or other social measures”
- Serve the Notice to Parent when releasing a Youth offender

Youth Releases

- A young person may be detained in custody only if:
 - Young person charged with a serious offence
 - or
 - There is a history that indicates a pattern of either outstanding charges or findings of guilt
- and
- Judge finds that:
 - There is substantial likelihood the accused will not attend court
 - or
 - Detention is necessary for the protection or safety of the public including any victim or witness having regard to the circumstances of the case including whether there is a substantial likelihood that the accused will commit a serious offence if released

4. Release Documents

Types of release documents available to a Peace Officer (NEW) include:

- Appearance Notice – Form 9 (NEW)
- Adult Undertaking – Form 10 (NEW)
- Young Offender Appearance Notice – Form 9 (YCJA)
- Young Offender Undertaking – Form 10 (YCJA)

4. Release Documents

- **NEW** Subsection 500(1) of the *Criminal Code* dictates that the release document must include, amongst other things, the *substance of the offence*. Case law requires that the substance of the offence must set out the statute. Short form wordings are acceptable, i.e. *CC 266 – Assault*
- Ensure that the correct region is included on the release
- Double check court dates for statutory holidays, court closures or designated first appearance court schedules

5. Crown Bail Directive

- In effect as of November 14, 2017
- Change in language from the “potential for tragedy at the bail hearing stage” to “one of the fundamental presumptions in Canadian criminal law is that a person arrested and charged with an offence will be out of custody prior to trial”
- The change in tone in the new directive is deliberate
- Moving away from risk aversion that has been the subject of criticism
- To an approach that is in step with the requirements of the *Criminal Code* and the direction from the Supreme Court in *R. v. Antic*, 2017 SCC 27

Highlights of the Bail Directive

- An emphasis on liberty as a guiding principle in bail proceedings and the recognition of detention as an exceptional practice
- A reminder that the fundamental bail principles apply with respect to all charges
- The reinforcement of the “ladder” principle as a basic underpinning of bail
- A statement that surety release is an exceptional measure
- Suggestions to make the bail process more efficient and less time-consuming
- A balancing of the rights of the accused and the public interest/public safety consistent with the provisions of the *Criminal Code* and related jurisprudence

6. Practical Reminders

- Conditions may NOT be attached to an Appearance Notice
- An Undertaking may be used for Summary Conviction offences only if an arrest is made
- Undertaking with deposit < \$500 (NEW) must be used for out-of-province residents or anyone who resides more than 200 km from the jurisdiction in which the offence occurred

Practical Reminders

- The Peace Officer who releases the accused must fill out two copies of the documents (Appearance Notice & Undertaking). The accused is to sign both copies.
- Accused does not have to sign an Appearance Notice s. 500(4) (NEW) or Undertaking s. 501(6) (NEW)
- Lack of signature does not invalidate the release
- The signed release documents must then be scanned in to the corresponding file and then sent to local Court Liaison
- Processing and distribution of all release documents should occur prior to the end of the shift
- If releasing on an endorsed warrant immediately provide a copy of the release documents to CPIC

Practical Reminders

- Where an accused has drug and criminal charges on the same information, the more serious charge takes precedence for first appearance court
- Set all co-accused to the same first appearance date (Youth and adults cannot appear in the same first appearance court)

7. Scenarios

#1

- 38 year old male charged with Impaired driving and over 80
- Arrested on scene after single motor vehicle collision
- BAC readings 195mg & 190mg
- Has criminal record for Impaired driving from 2001
- Promise to appear from another jurisdiction from January 2017 for Impaired driving
- Outstanding warrant in Alberta for theft and theft of a motor vehicle from 1999
- Residence, job and girlfriend in arresting jurisdiction

#2

- 25 year old male charged with sexual assault and voyeurism
- Accused of photographing and having intercourse with his 24 year old terminally ill girlfriend while she is heavily medicated
- She has also seen photographs on his cellphone of other “younger” females
- No criminal record, no outstanding charges
- Accused has a job but was residing with the victim

#3

- On May 16, accused was charged with theft from the LCBO and released on an appearance notice
- On June 25, accused was charged with theft from a different LCBO and released on another appearance notice
- On August 6, accused was charged with theft from yet another LCBO and released on an undertaking
- On September 12, the accused failed to appear in set date court and a bench warrant was issued and endorsed by the presiding Justice of the Peace
- Accused has a criminal record starting in 1987 for property offences
- Accused ordinarily resides in the shelter system and is an alcoholic

#4

- Accused is charged with one count of assault against his girlfriend of two years
- Allegation is that accused shoved her and slapped her across the face
- Victim gave a statement to officers on the scene but has declined to come to the station for a video statement
- No children
- No prior occurrences and accused has no criminal record

Additional Resources: Bail Vettors

- Bail vettor Crowns are in place in 10 courthouses across the province:
 - Kenora
 - London
 - Kitchener
 - Newmarket
 - Barrie
 - Brampton
 - Ottawa
 - Hamilton
 - Old City Hall (Toronto)
 - College Park (Toronto)
- Available upon request to provide advice to local police on issues around detention and release

Additional Resources: Embedded Crowns

- Crowns are embedded at two police services in Ontario
 - Toronto Police Service, 51 Division
 - Ottawa Police Service
- One of the duties of the embedded Crowns is to support and provide advice to police in their exercise of pre-trial release powers
- If you work in one of these jurisdictions, use this resource

Additional Resources:

- Local Crown Attorneys and/or Deputy Crown Attorneys are available to address any questions
- Contact information:
 - [to be added by local Crown Attorney and/or ACA providing training]