

CRIMINAL JUSTICE AND PUBLIC SAFETY MEETING

PROBATION AGENDA

7/29/19

- I. Committee Meeting called to order by Chairman
- II. Motion to approve minutes from prior Committee Meeting
- III. Action Agenda

REQUEST RESOLUTION –Authorization for Robert Iusi, Jr. to attend American Probation and Parole Association 44th Annual Training Institute in San Francisco, CA from 8/17/19 to 8/21/19.

RATIONAL – Excellent opportunity for Director to attend a National Conference regarding Probation practices. The NYS Council of Probation Administrators will pay all expenses and there is no cost to the county.

- IV. Pending Items – There are no pending items
- V. Information and Discussion – Bail Reform
- VI. Attachment – Resolution Request, Power Point Bail Reform.

RESOLUTION REQUEST FORM NO. 15

*Requesting Approval for Out-of-State Travel**

**If the conference announcement or details are available in writing, please attach.*

DEPARTMENT NAME: Probation Department

DATE: 7/29/19

- (a) Dates of Travel: 8/17/19 to 8/21/19
- (b) Purpose (include complete name of any conference, school, etc.): American Probation and Parole Association 44th Annual Training Institute
- (c) City/Town & State: San Fransico, CA
- (d) Employee(s) Traveling (include title(s): Robert F. Iusi Jr. Director of Probation
- (e) Is County paying the costs or is another Agency? No cost to County - NYS Council of Probation Administrator is paying all costs.
- (f) Mode of Transportation to be Use: Airplane
(County Vehicle or Mass Transportation)

Please note: If County vehicle use is requested, upon resolution approval, please provide Fleet Manager Frank Morehouse with vehicle request form properly completed.

2019 COPA SUMMMER CONFERENCE PRESENTS

BAIL REFORM 101

A Review of the 2019 Pre-Trial Justice Reform Act
Effective Date January 1, 2020

YOUR PRESENTERS: Joy Bennett/Tioga County

Patricia Buechel/Tompkins County

June 24, 2019



HISTORICAL CONTEXT



The Bail Statute was adopted in 1970 on the tail end of a major reform movement around bail in the 1960s. The goal was to “reduce the un-convicted portion of our jail population” by creating less restrictive options to secure a defendant’s future court attendance.

Bail is authorized in the following ways: cash, an insurance company bail bond, a surety bond, a secured appearance bond, a partially secured surety bond, a partially secured appearance bond, an unsecured surety bond or appearance bond, and/or credit card.

Judges rarely impose unsecured or partially secured bonds, instead two of the most restrictive forms of bail are used: cash bail and commercial bond.

Judges are to consider a list of factors before imposing bail, but ability to pay bail is not often one of them.

NYS IS NOT THE FIRST TO ENACT BAIL REFORM

August 2018, California became the first state to eliminate cash bail with an effective date of October 2019.

Washington D.C. is the only other municipality to eliminate cash bail.

California's reform, there is no bail or bail bond agents. Local Courts decide who is to remain in custody and who is to be released based on an algorithm created by the courts in each jurisdiction.

Non Violent misdemeanor cases are released within 12 hours. Other cases are ordered on seriousness of the crime, likelihood of recidivism and likelihood of appearing in court.



SUDDENLY, IT IS REAL AND MOST EVERYBODY GETS ONE



PRESUMPTION OF RELEASE-APPEARANCE TICKET

2019 Pre-trial Justice Reform Act is based on a Presumption of Release

- ❖ An Appearance Ticket is to be issued by a Police Officer for most Misdemeanor and most E Felony charges.
- ❖ Before issuing the ticket, the Police Officer shall inform the arrestee that they may provide their contact information for the purpose of being reminded of their court appearance date. Such contact information may include phone number(s), a residential address or an address where the arrestee receives mail, or an email address.
- ❖ The Appearance Ticket and the contact information is to be recorded and sent to the local criminal court within 24 hours of issuance.

PRESUMPTION OF RELEASE-APPEARANCE TICKET

Upon receipt of the Appearance Ticket and contact information, the court shall issue a court appearance reminder to the principal by text, telephone call, email or first class mail, unless the court date is within 72 hours of it's issuance.

NOTE: The legislation indicates that the court MAY partner with a certified pre-trial services agency to provide this reminder notification to the ROR arrestee. This will be an added responsibility for Pre-trial Release agencies.

DISCUSSION: How will PTR agencies be notified of the Appearance Ticket/contact information in a timely way?

Will additional technology be needed for departments to provide the communication?



GO TO ARRAIGNMENT

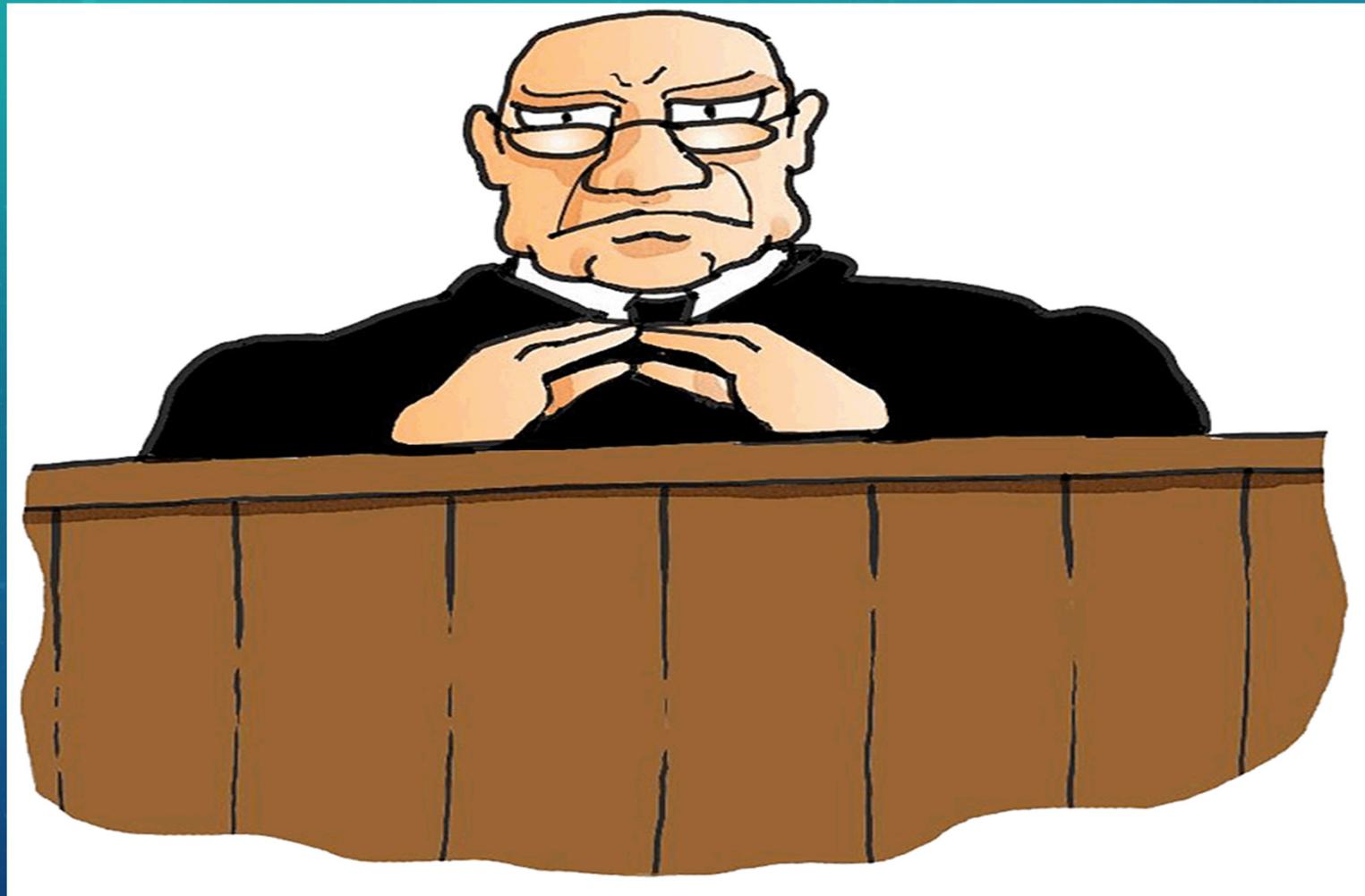
Police Officer is not required to issue the Appearance Ticket IF:

- ❖ the person is charged with an A, B, C, or D Felony;
- ❖ the person is charged with one of the following E Felony offenses: Escape 1st, Absconding 1st, Absconding From a Community Treatment Facility, or Bail Jumping;
- ❖ the person has one or more outstanding warrants;
- ❖ the person has failed to appear in court proceedings in the last two years;

GO TO ARRAIGNMENT..... CONTINUED

- ❖ the person is unwilling or unable to verify their identity after being given a reasonable opportunity;
- ❖ the person is charged with a crime between members of the same household;
- ❖ the person is charged with a PL 130 offense;
- ❖ the person should be brought to the court for consideration of an Order of Protection;
- ❖ the person is charged with a crime for which the driver's license may be revoked/suspended; or
- ❖ the person's condition is such that the police officer believes there is a risk of harm without medical or mental health care.

MY OPTIONS FOR RELEASE ON MISDEMEANORS AND FELONY ARRAIGNMENTS DO NOT INCLUDE REMAND?



court
→→

A WORD ABOUT MISDEMEANORS



Money bail is eliminated with only two exceptions:

Sex offenses; and

Criminal Contempt charges for an Order of Protection violation in a domestic violence case.

Straight pre-trial detention (remand) is eliminated in all misdemeanor cases.

A WORD ABOUT NON VIOLENT FELONIES

Both money bail and pre-trial detention are eliminated in virtually all non violent felonies with the following exceptions:

Witness Intimidation or Tampering;

Conspiracy to Commit Murder;

Felony Criminal Contempt charges involving DV (Criminal Contempt 1st & Aggravated Criminal Contempt); and

a limited number of offenses against children, sex offenses and terrorism-related charges.

A WORD ABOUT VIOLENT FELONIES

Money bail and detention are still permitted in virtually all violent felonies except specific sub-sections of Burglary 2nd and Robbery 2nd.

Bail and detention are also permitted in cases classified as Class A Felonies, most of which also involve violence.

Notable caveat: bail and detention are eliminated for all Class A drug felonies, with the sole exception of operating as a major trafficker.

5

FIVE RELEASE OPTIONS AT ARRAIGNMENT (OR SUBSEQUENT)

OR is the presumptive option unless the court makes “individualized determination” of flight risk. If flight risk is determined, the court can move up the ladder of 5 options from least to most restrictive as follows:

1. Release Under Non-Monetary Conditions- least restrictive conditions that will reasonably assure the principal’s return to court. Conditions may include:

- ❖ Be in contact with a certified pre-trial services agency;
- ❖ Abide by reasonable specified restrictions on travel;
- ❖ Refrain from possession of a firearm, destructive device, or other dangerous weapon.

2. When no other realistic monetary or non-monetary conditions will suffice to assure court appearance, the principal can be placed in reasonable pre-trial supervision with a pre-trial services agency.

RELEASE OPTIONS CONTINUED

When no other realistic monetary or non-monetary conditions will suffice to assure court appearance, the principal's location can be monitored with an approved electronic monitoring device (at no cost to the principal).

Fix Bail

Commit to the Custody of the Sheriff



RELEASE CONSIDERATIONS

In all cases the court must consider and take into account the following in determining a principal's return to court:

The principal's activities and history;

If the principal is a defendant, the charges facing the principal;

The principal's record of previous adjudication as a JD or pending cases where fingerprints were retained, or Youthful Offender

The principal's previous record with respect to flight to avoid prosecution; and

If monetary bail is set, the principal's individual financial circumstances: ability to post bail without posing undue hardship and ability to obtain a secured/unsecured or partially secured bond.

DISCUSSION Note: How is the court going to obtain this information at arraignment?



PLEASE CONSIDERATIONS CONTINUED/DV OFFENSE

Where the principal is charged with a crime against a member(s) of the same household, the following factors must be considered:

Any violation by the principal of an Order of Protection issued by any court

The principal's history of use or possession of a firearm.

This has not changed from current law.



OCA EXPECTATIONS?



ExpectationAt Probation Commission meetingProbation run Pre-trial Release Programs will assess principals and advise the Courts of the level of “supervision” needed.

CONCERNS WITH THIS STATEMENT:

1. No approved assessment tool currently exists
2. Assessments are completed only for convicted defendants by Probation
3. Supervision only for convicted defendants
4. Does not address change in philosophy to focus only on court appearances not the principal's needs.

RELEASE UNDER NON-MONETARY CONDITIONS

When a principal is released under non-monetary conditions, the Court shall, on the record:

- ❖ provide an individualized written document in clear and specific language as to the conditions the principal is subject to; and
- ❖ Notify the principal of the possible consequences for violation of a release condition, including revocation and the ordering of a more restrictive order.

In addition, the court must provide notification, or direct a certified PTR agency to notify the principal under non-monetary conditions AND principals under ROR, of court appearances in advance by text message, telephone call, email, or first class

WHO QUALIFIES FOR ELECTRONIC MONITORING?

Person charged with a Felony;

Person charged with a Misdemeanor crime of domestic violence;

Person charged with a Misdemeanor PL 130 offense;

Person who was released under monetary and non-monetary conditions and has been found to be in violation of the release conditions;

Person charged with any Misdemeanor where there is a violent felony offense conviction in the past 5 years; and

Limited number of circumstances where a judge finds that defendants have engaged in pre-trial misbehavior.

WHEN ELECTRONIC MONITORING IS ORDERED

EM may be ordered only if the court finds that no other realistic non-monetary condition(s) will suffice.

The specific method of EM of the principal's location must be approved by the court-it must be the least restrictive procedure and method and unobtrusive to the greatest extent practicable.

“EM of the location of a principal may be conducted only by a public entity under the supervision and control of a county or municipality or a non-profit entity under contract to the county, municipality or the state. A county or municipality shall be authorized to enter into a contract with another county or municipality in the state to monitor principals under non-monetary conditions of release in its county, but counties, municipalities, and the state shall not contract with any private for profit entity for such purpose.”

NOTE: The language in the legislation regarding the last bullet requires clarification as it is open to interpretation.

WHEN ELECTRONIC MONITORING IS ORDERED - CONTINUOUS

EM of a principal's location may be for a maximum of 60 days and may be renewed by the court after a hearing.

A defendant subject to EM shall be considered held or confined in the custody of the sheriff and shall be considered committed to the custody of the sheriff.

The cost of the EM shall not be borne by the principal.

WHEN ELECTRONIC MONITORING IS ORDERED - CONTINU

DISCUSSION



Many PTR programs do not presently utilize EM and will need to provide the service per the legislation, which will have financial implications to counties.

OCA's approval of the method and type (least obtrusive) of EM begs the question-are we heading towards EM manufacturers having to meet certain regulations? Will the ankle bracelet variety of EM not be allowed? What would this mean to the PTR programs who currently have contracts with an EM company-will we be required to switch to only OCA approved manufacturers?

If the principal is in the custody of the sheriff while on EM, then the number of days served on EM will be credited to any jail sentence. This will require PTR programs to communicate this data to the sheriff.

PRE-TRIAL SERVICES AGENCIES

CA shall certify and regularly review for recertification pre-trial service agencies in each county.

Every agency shall be a public entity under the supervision and control of a county or municipality.

Any questionnaire, instrument or tool used with a principal to consider or determine release recommendations shall be made available to the principal and attorney upon written request.

Any such questionnaire shall be:

- ❖ designed and implemented in a way that ensures results are free from bias; and
- ❖ empirically validated and regularly revalidated (with studies and underlying data publicly available).

PRETRIAL SERVICES AGENCIES - CONTINUED

- ▶ What does the initial and regularly thereafter Certification process entail? A Plan? A Contract? How detailed? Submission process for approval? Yearly?
- ▶ The COMPAS FTA risk scale has not been validated in NYS. The ability to validate (and re-validate) and publicize the supporting data of this questionnaire and tool used to determine release recommendations is beyond the scope of individual PTR programs. How will this aspect of the legislation be managed? Will another tool which has been validated (is there another tool?) be provided to certified pre-trial services agencies? If there is no tool, the process to create and validate a new tool will take years.

How much is it?

It varies. You just keep putting money in until you're broke and hope for the best.



JUSTICE



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7.24.14

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DATA COLLECTION REQUIREMENTS

Each Pre-trial Services Agency shall prepare and file an annual report with OCA with the following data elements:

- ❖ the number of defendants supervised by the agency;
- ❖ the length of time in months each person was supervised by the agency prior to acquittal, dismissal, release on recognizance, revocation of release conditions, and sentencing;
- ❖ the race, ethnicity, age, and sex of each person supervised;
- ❖ the crime(s) with which the supervised person was charged;

DATA COLLECTION REQUIREMENTS CONTINUED

- ❖ The number of persons supervised for whom release conditions were modified by the court, describing the type and nature of the condition(s) added or removed;
- ❖ The number of persons supervised for whom RUS was revoked and the basis of the revocation; and
- ❖ The court disposition in each supervised case, including sentencing information.



DISCUSSION: CE will not capture most of these data elements and several of them require information from the court. How will Probation collect this data? Will OCA provide a data base for Pre-trial service agencies? Or will we have to create our own individual spreadsheet for this purpose?

BENCH WARRANT GRACE PERIOD

Courts cannot issue a bench warrant for 48 hours whenever a defendant fails to appear, UNLESS the defendant is charged with a new crime or there is evidence of a “willful” failure to appear.

During the 48 hour period, a defense attorney can contact the defendant and encourage a voluntary return.



RESPONSES TO NONCOMPLIANCE

Courts may revoke release conditions and set new conditions, including money bail and detention in response to specified forms of pre-trial misbehavior, including:

Committing a new felony where the defendant was initially charged with a felony;

Intimidating a witness;

Persistently and willfully failing to appear at scheduled court dates; or

Violating an Order of Protection.

NOTE: In such cases, the court must first hold a hearing where the defendant may present evidence or cross examine witnesses.

Pretrial Options Based on 2018 Arraignment Volumes Source: DCJS	Total Arraignments	PTR Required (defined as ROR, any non-monetary conditions imposed and RUS)	Bail Eligible or PTR (Misd Sex Offenses)	Remand Eligible or Bail or PTR	PL 215.50/51 Non DV Contempt Charges-PTR. If DV, Bail or Remand Eligible
NYS: Total	347,884	307,307	1,739	22,823	16,015
Violent Felony	26,768	4,581		22,187	
Non-Viol Felony	63,901	57,725		636	5,540
*Misdemeanor	257,215	245,001	1,739		10,475
NYC: Total	173,840	153,218	1,041	13,441	6,140
Violent Felony	15,145	1,983		13,162	
Non-Viol Felony	22,741	20,587		279	1,875
*Misdemeanor	135,954	130,648	1,041		4,265
ROS: Total	174,044	154,089	698	9,382	9,875
Violent Felony	11,623	2,598		9,025	
Non-Viol Felony	41,160	37,138		357	3,665
*Misdemeanor	121,261	114,353	698		6,210

*Note: data excludes 16 and 17 year old misdemeanors

PRE-TRIAL OPTIONS BASED ON 2018 ARRAIGNMENT VOLUMES CONTINUED

According to the Center for Court Innovation, of the almost 205,000 (includes 16 and 17 year old misdemeanors) criminal cases arraigned in NYC in 2018, 90% of cases will be released at arraignment and only 10% would have been eligible for money bail.

Things to consider with the data:

Data is pulling the top charge only so that it is possible the other attached charges would still qualify them for bail or detention.

The data is a snapshot of new criminal charges at initial arraignment. Some individuals could be detained at a later date in the Pre-trial period where bail or detention is imposed due to pretrial misbehavior.

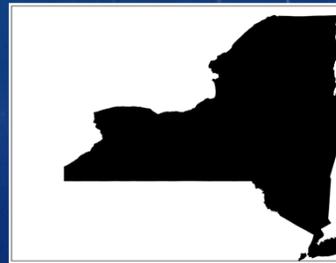
Parole violators create a mandatory “parole hold” that bail reform does not remove.

POTENTIAL IMPACT

Precise effects of the law cannot be predicted in advance since they partly depend on how new provisions are implemented.

Preliminary analysis suggest that bail reform law will significantly reduce pre-trial detention; estimates for NYC indicate 43% of the almost 5,000 people detained would have been released under the new legislation as they would no longer be eligible for either bail or detention.

Impacts outside NYC could be even greater because many upstate jurisdictions have higher rates of detention with misdemeanors.



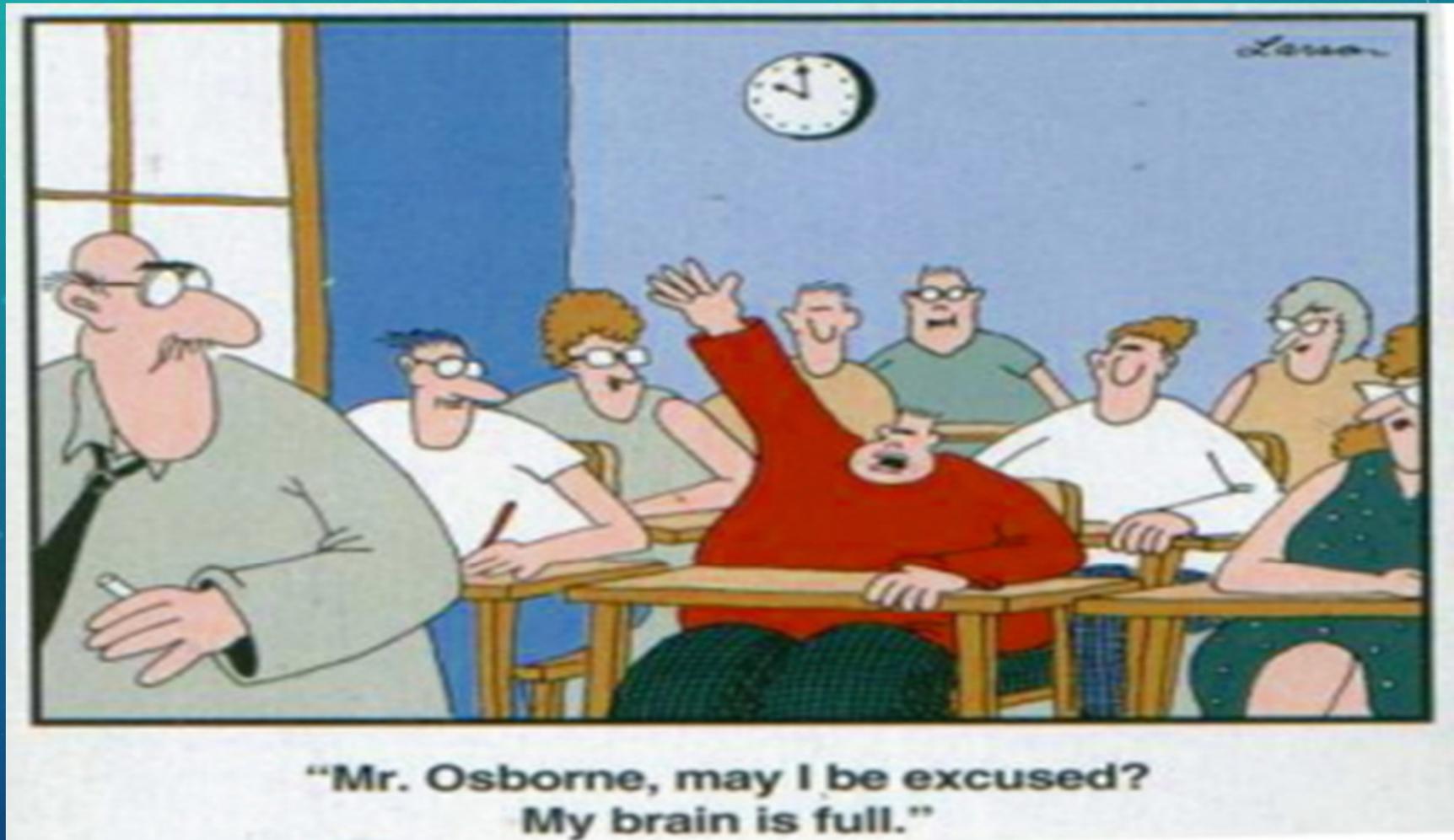
QUESTIONS?..... WHAT ABOUT?.....

Arraignments for Violation of Probation petitions?

Drug Treatment Court remands?

Other situations?

NALLY...



**"Mr. Osborne, may I be excused?
My brain is full."**

