

# Judicial Process Through the Criminal Division



**January 26, 2023**

**House Corrections and Institutions Committee**

## Objective

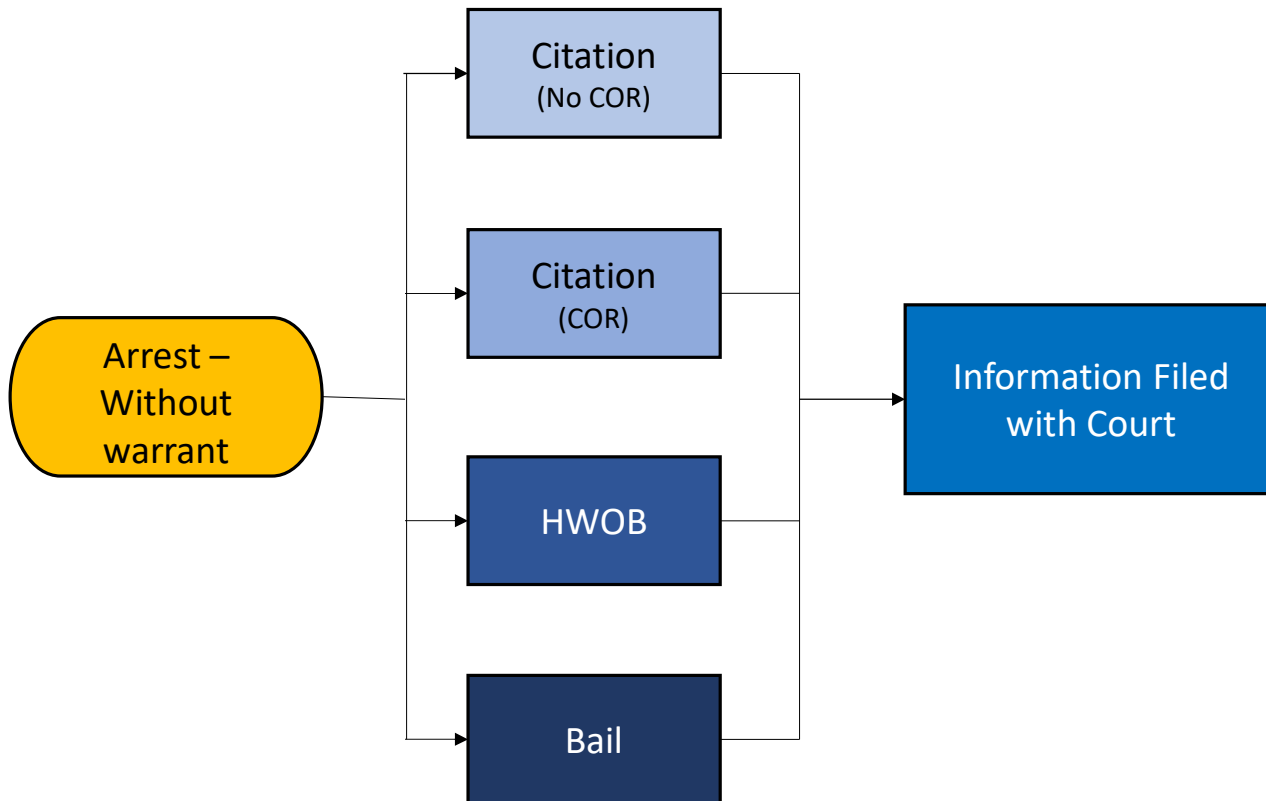
- To provide a general overview of the Criminal Division process

## Some Terms

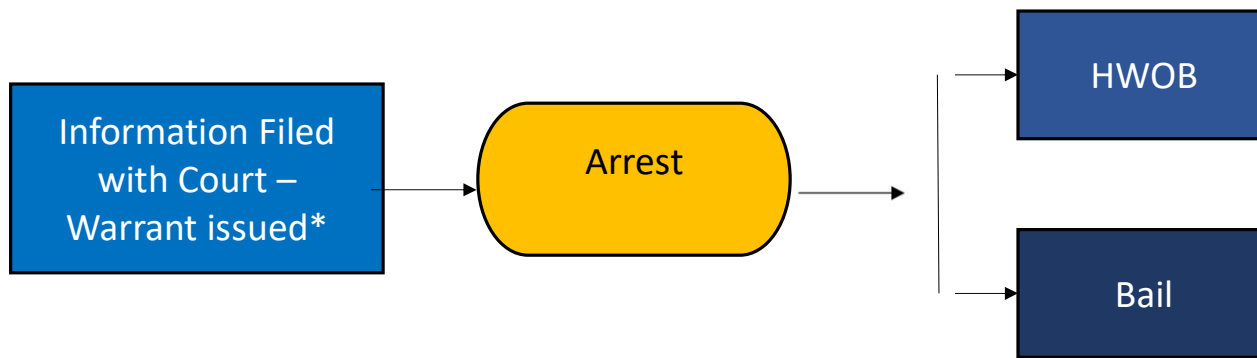
- “ROR” – release on personal recognizance
- “COR” – conditions of release
- “HWOB” – hold without bail
- “Information” – the charging document
- “Citation” – a document which is served upon a person requiring them to appear in court for a criminal charge

- “VOP” – violation of probation
- “Bail” means any security, including cash, pledged to the court to ensure that a person charged with a criminal offense will appear at future court proceedings.
- “Flight from prosecution” means any action or behavior undertaken by a person charged with a criminal offense to avoid court proceedings.

# Arrest without warrant

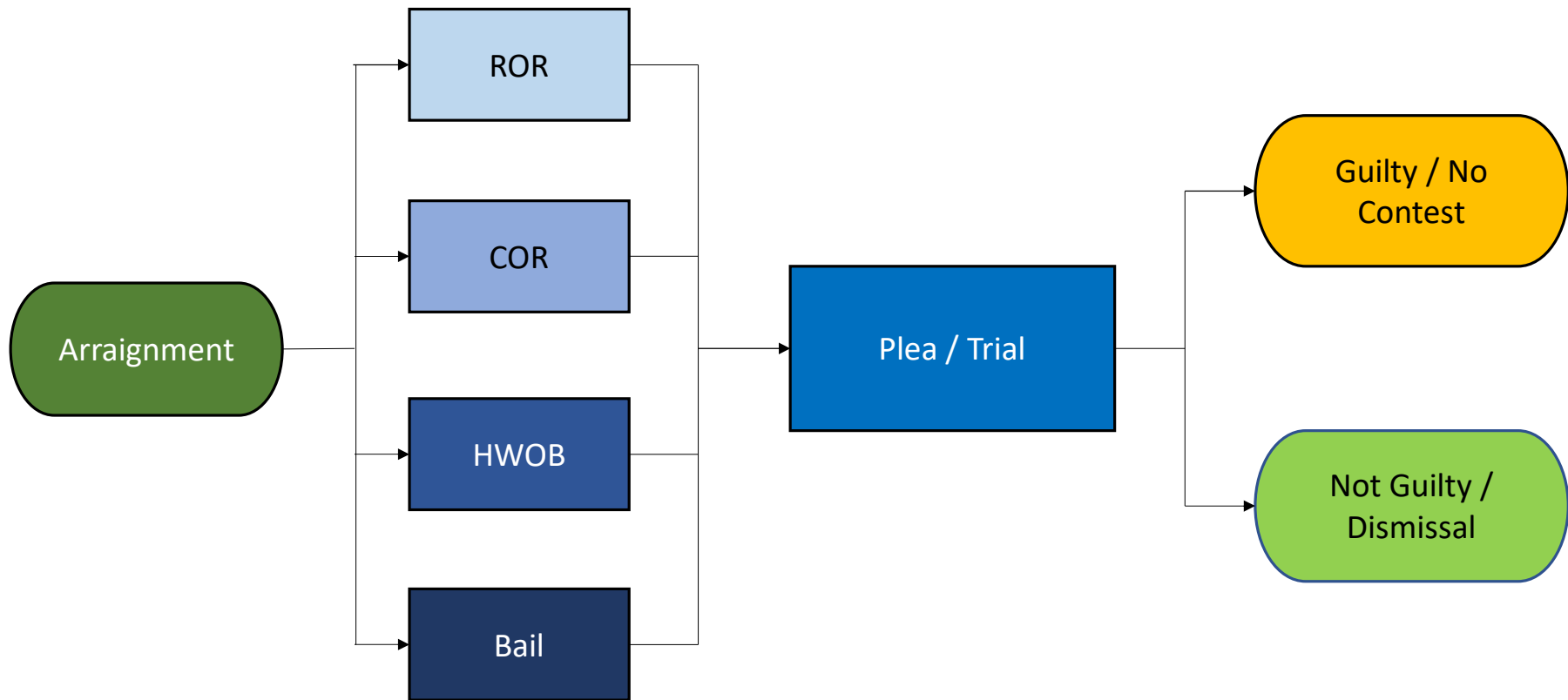


# Arrest with warrant

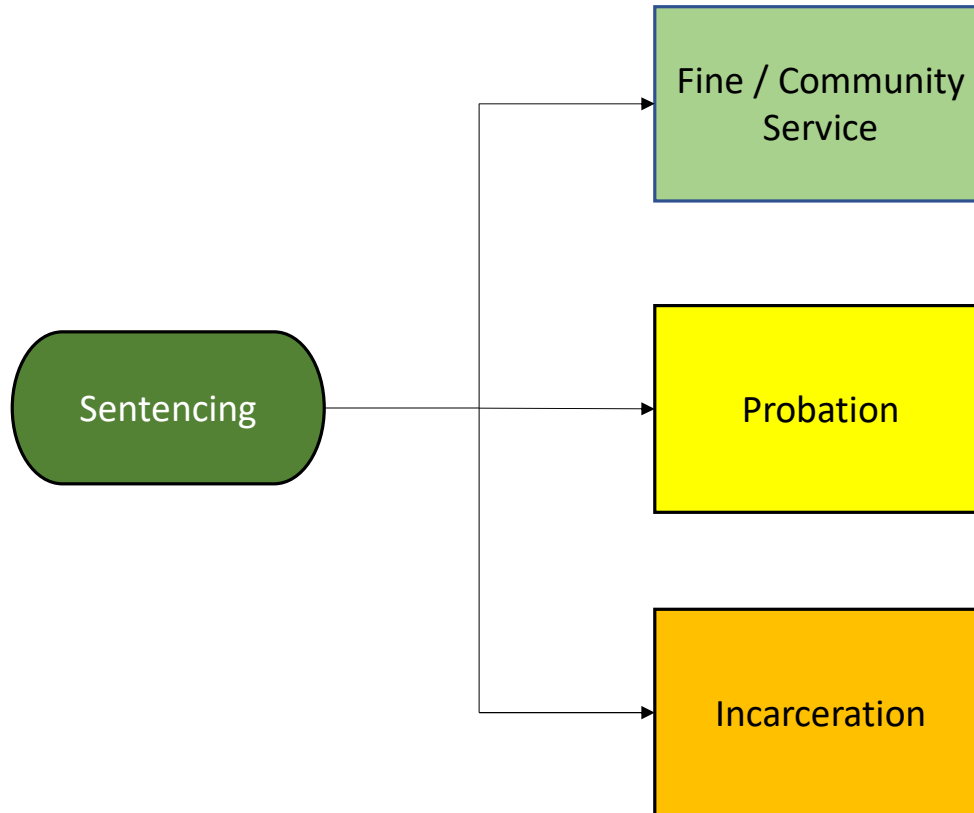


**\*Note: A judge may issue a summons instead of a warrant. A summons is similar to a citation and the person is not taken into custody, but rather must appear at a set date/time for arraignment.**

# Arraignment/Trial/Plea



# Sentencing





## Pretrial Release – 13 VSA § 7554(a)

“Any person charged with an offense, other than a person held without bail under section 7553 or 7553a of this title, shall at his or her appearance before a judicial officer be ordered released pending trial in accordance with this section.”

## “HWOB” - 13 V.S.A. § 7553 (life imprisonment)

- Crime charged has a maximum potential sentence of life imprisonment
- When this statute applies there is a presumption of detention
- Court still maintains discretion to release defendant and may look to § 7554 factors

## “HWOB” - 13 V.S.A. § 7553a (violent felony)

- Defendant is charged with (1) a felony, (2) which includes as an element an act of violence; (3) the evidence of guilt is great; (4) court finds by clear and convincing evidence that the person’s release poses a substantial threat of physical violence to any person; and (5) no condition or combination of conditions will reasonably prevent the physical violence.

## Note: § 7553a – Trial Requirement

- If HWOB under § 7553a the trial must commence within 60 days
- If trial does not commence, and no waiver by defendant, the court must set COR/bail

## Pretrial Release - 13 V.S.A. § 7554(a)(1)

“The person shall be ordered released on personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the judicial officer determines that such a release will not reasonably assure the appearance of the person as required.”

*State v Hance*, 2006 VT 97, ¶ 17.

We emphasize that “[t]he bail statutes themselves assume that a defendant will be released on personal recognizance or an unsecured appearance bond unless a finding is made that such measures will be insufficient.”

# Bail

- What is the reason it is imposed?
- Are there limits to its imposition?

## Bail – Reason it is imposed

- The sole constitutionally legitimate purpose of monetary conditions of release is to provide 'additional assurance of the presence of an accused.' "
- "bail may be used only to assure the defendant's appearance in court and cannot be used as "a means of punishing the defendant, nor of protecting the public." *State v. Pratt*, 2017 VT 9, ¶ 13.



## Bail - Amount imposed

- While a Court need not make a finding as to ability to pay the amount of bail imposed, “in light of our caselaw on the subject, bail requirements at a level a defendant cannot afford should be rare.” *Id.* at ¶ 9.

## Bail – Statutory Limits

- Under 13 VSA § 7551(b)(1) no bail, secured appearance bond or appearance bond may be imposed:
  - (A) at the initial appearance of a person charged with a misdemeanor if the person was cited for the offense ...; or

- (B) at the initial appearance of a person charged with a misdemeanor that is eligible for expungement pursuant to 13 V.S.A. § 7601(4)(A) unless the court finds that imposing bail is necessary to mitigate the risk of flight from prosecution.

## \$200 limit for amount of bail for expungeable misdemeanors

- (2) In the event the court finds that imposing bail is necessary to mitigate the risk of flight from prosecution for a person charged with a violation of a misdemeanor offense that is eligible for expungement pursuant to subdivision 7601(4)(A) of this title, the court may impose bail in a maximum amount of \$200.00.

- (3) This subsection shall not be construed to restrict the court's ability to impose conditions on such persons to reasonably mitigate the risk of flight from prosecution or to reasonably protect the public in accordance with section 7554 of this title.

## Factors to Consider for COR/Bail

- Seriousness and number of offenses
- the nature and circumstances of the offense charged
- the weight of the evidence against the accused,
- the accused's employment
- financial resources, including the accused's ability to post bail
- Record of convictions

- character and mental condition (Recent history of actual violence or threats of violence may be considered by the judicial officer as bearing on the character and mental condition of the accused.)
- the length of residence in the community and
- record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

## Conditions –13 V.S.A. § 7554(a)

- If after considering the necessary factors the court concludes that the defendant presents a risk of flight from prosecution, or that the conditions to mitigate risk of flight will not reasonably protect the public, the court may impose the least restrictive of the following:



## Conditions –13 V.S.A. § 7554(a)

- Place the defendant in the custody of a designated person or organization agreeing to supervise him or her if the defendant is charged with an offense that is not a nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301.

## Conditions –13 V.S.A. § 7554(a)

- Place restrictions on the travel, association, or place of abode of the defendant during the period of release.
- Require the person to participate in a drug or alcohol treatment program (taking into account the person's ability to comply with an order of treatment and the ability of treatment resources).

## Conditions –13 V.S.A. § 7554(a)

- Upon consideration of the defendant's financial means require a secured appearance bond in cash or security of a sum not to exceed 10 percent of the bond.
- Upon consideration of the defendant's financial means require surety bond with sufficient solvent securities.

## Conditions –13 V.S.A. § 7554(a)

- Any other condition necessary to mitigate the risk of flight including returning to custody for specific hours.
- Impose any other condition found reasonably necessary to protect the public, except that a physically restrictive condition may only be imposed in extraordinary circumstances

## No contact condition – 13 V.S.A. § 7554(a)(3)

- A judicial officer may order that a defendant not harass or contact or cause to be harassed or contacted a victim or potential witness. This order shall take effect immediately, regardless of whether the defendant is incarcerated or released.

## Home Detention – 13 V.S.A. § 7554b

- A defendant who is detained pretrial for more than seven days for lack of bail may be reviewed by the court to determine whether the defendant is appropriate for home detention.
- The request for review may be made by either DOC or the defendant.

# Home Detention

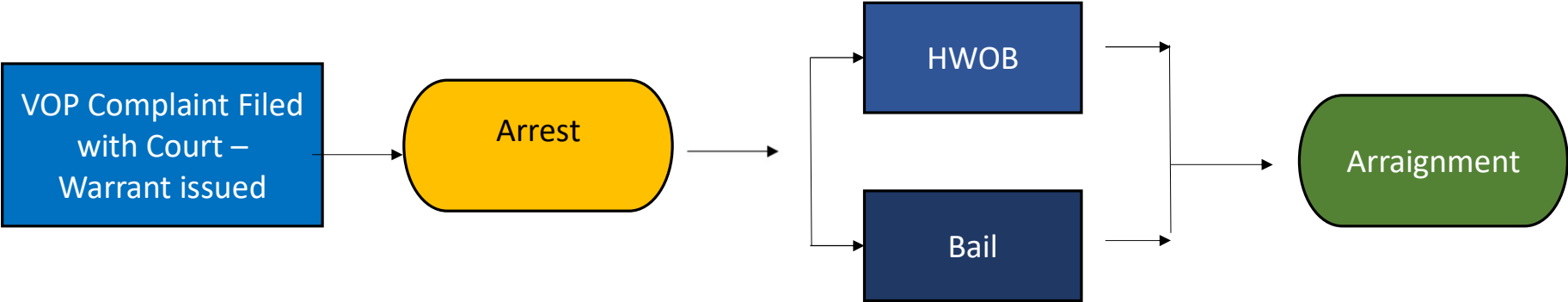
- In making such a determination, the Court shall consider:
  - (1) the nature of the offense with which the defendant is charged;
  - (2) the defendant's prior convictions, history of violence, medical and mental health needs, history of supervision, and risk of flight; and

## Home Detention

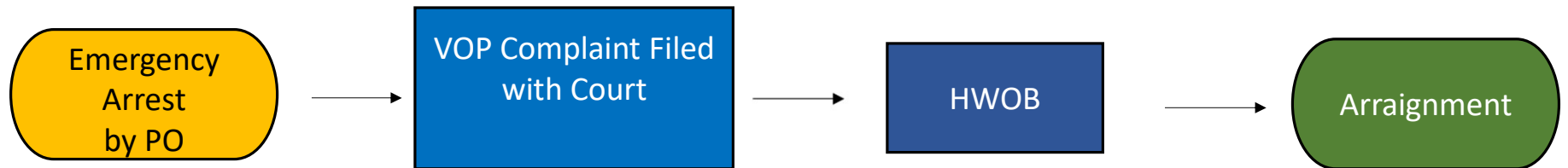
- (3) any risk or undue burden to other persons who reside at the proposed residence or risk to third parties or to public safety that may result from such placement.
- DOC may revoke a defendant's home detention status for an unauthorized absence or failure to comply with any other condition of the program and shall return the defendant to a correctional facility.



# VOP arrest with warrant



# VOP arrest without warrant



## VOP – Release - 28 V.S.A. § 301

- Pending arraignment for any charge of violation, the probationer shall be detained at a correctional facility unless issued a citation by a correctional officer. Thereafter, the court may release the probationer pursuant to 13 V.S.A. § 7554. There shall be no right to bail or release, unless the person is on probation for a nonviolent misdemeanor or nonviolent felony.

## VOP – Release - 28 V.S.A. § 301

- At arraignment, if the court finds that bail or conditions of release will reasonably ensure the probationer's appearance at future proceedings and conditions of release will reasonably protect the public, the court shall release a probationer who is on probation for a nonviolent misdemeanor or nonviolent felony pursuant to 13 V.S.A. § 7554.

## Nonviolent felony

- “Nonviolent felony” means a felony offense that is not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64.

## Nonviolent misdemeanor

- “Nonviolent misdemeanor” means a misdemeanor offense that is not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64 or 13 V.S.A. § 1030.

## Disposition alternatives if VOP established

- The court may, in its discretion, revoke probation and require the probationer to serve the sentence that was suspended
- As an alternative to revocation and imposition of sentence, the court, in its discretion, after a violation has been established, may:

## Disposition alternatives if VOP established

- (1) continue the probationer on the existing sentence;
- (2) effect, in accordance with subsection 253(b) of this title, necessary or desirable changes or enlargements in the conditions of probation;
- (3) conduct a formal or informal conference with the probationer in order to reemphasize to him or her the necessity of compliance with the conditions of probation;



## Disposition alternatives if VOP established

- (4) issue a formal or informal warning to the probationer that further violations may result in revocation of probation by the court; or
- (5) continue the probationer on the existing sentence, but require the probationer to serve any portion of the sentence

# THE END

- Do not hesitate to let me know any questions  
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