

CCJJ BAIL SUBCOMMITTEE

RECOMMENDATION PRESENTED TO THE CCJJ
October 12, 2012

FY13-BL #1 Implement evidence based decision making practices and standardized bail release decision making guidelines

Recommendation:

Judicial districts should implement evidence based decision making practices regarding pre-release decisions, including the development and implementation of a standardized bail release decision making process.

Discussion:

The use of evidence-based practices is essential in all areas of criminal justice to maximize efficiencies and reduce recidivism, including the pretrial release decision making process. Using evidence-based practices at pretrial release is intended to increase the success rate of pretrial detainees, reduce failure to appear rates, reduce recidivism, and reduce jail crowding. Nationally, 60% of local jail populations are pretrial detainees, a figure that has remained relatively stable over time.¹ According to the Pretrial Justice Institute, “the pretrial decision affects how limited jail space is allocated and how the risks of non-appearance and pretrial crime by released defendants are managed. The pretrial decision also affects defendants’ abilities to assert their innocence, negotiate a disposition, and mitigate the severity of a sentence.”² Use of empirically developed risk assessment instruments can improve decision making by classifying defendants based on their predicted level of pretrial failure. Those with very high risk scores or high-violence index crimes may be held in jail pretrial but must be afforded a due process hearing.

Research undertaken on pretrial defendants in ten Colorado judicial districts indicates that the vast majority of individuals appear in court and remains crime-free during the pretrial period.³ This research resulted in the development of the Colorado Pretrial Assessment Tool (CPAT), a four-category risk instrument that identifies the relative risk of pretrial defendants. This instrument is currently being implemented in at least four Colorado judicial districts. Pretrial program staff in these districts have begun working with local stakeholders to identify recommended/suggested release decisions, alternatives to incarceration, and individualized conditions of release based on a defendant’s characteristics such as charge and risk assessment score. An example of a risk-focused, structured decision making matrix is provided below. This matrix can serve as a starting point for stakeholders in local jurisdictions to modify according to local needs.

¹ Minton, Todd D. (April 2012). Jail Inmates at Midyear 2011—Statistical Tables. Bureau of Justice Statistics, Washington, D.C. Available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/jim11st.pdf>.

² Mamalian, Cynthia. A. (March 2011). *State of the Science of Pretrial Risk Assessment*. Jointly published by the Pretrial Justice Institute and the Bureau of Justice Assistance. Washington D.C. Page 4. Citing Mahoney, Beaudin, Carver, Ryan, and Hoffman (March 2001). *Pretrial Services Programs: Responsibilities and Potential*. National Institute of Justice: Issues and Practices. Washington, D.C.

³ Pretrial Justice Institute & JFA Institute. (February, 2012). *The Colorado Pretrial Assessment Tool (CPAT), A Joint Partnership among Ten Colorado Counties, the Pretrial Justice Institute, and the JFA Institute*. Pretrial Justice Institute, Washington, D.C. See also Pretrial Justice Institute. (August 2012). *Revised Risk Categories for the Colorado Pretrial Assessment Tool (CPAT)*. Pretrial Justice Institute, Washington, D.C.

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Release Decision Guidelines Matrix

		Top Charge																	
Risk Assessment Score		F1		F2		F3		F4		F5		F6		M		Petty	T	DUI	DV
		Person	Person	Prop	Person	Prop	Person	Prop	Person	Prop	Person	Prop	Person	Prop	Person	Prop	Prop		
4		Red	Red	Yellow	Red	Yellow	Red	Green	Green	Green	Green	Green	Green	Green	Green	White	White	Yellow	Yellow
		Red	Yellow	Yellow	Yellow	Yellow	Green	Green	Green	Green	Green	Green	Green	Green	Green	White	White	Yellow	Yellow
3		Red	Yellow	Yellow	Yellow	Yellow	Green	Green	Green	Green	Green	Green	Green	Green	Green	White	White	Yellow	Yellow
		Red	Yellow	Yellow	Yellow	Yellow	White	White	White	White	White	White	White	White	White	White	White	Yellow	Yellow
2		Red	Yellow	Yellow	Yellow	Yellow	White	White	White	White	White	White	White	White	White	White	White	Yellow	Yellow
		Red	Yellow	Yellow	Green	Green	White	White	White	White	White	White	White	White	White	White	White	Yellow	Yellow
1		Red	Yellow	Yellow	Green	Green	White	White	White	White	White	White	White	White	White	White	White	Yellow	Yellow
		Red	Yellow	Green	Green	Green	White	White	White	White	White	White	White	White	White	White	White	Yellow	Yellow

Red → Detention with due process assuming the court applies Article II Sections 19 and 20 of the Colorado Constitution and C.R.S. 16-4-101.

Yellow → Intense supervision AND/OR conditions

Green → Basic/enhanced supervision AND/OR conditions

White → Release with no supervision or conditions

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FY13-BL #2 Discourage the use of financial bond for pretrial detainees and reduce the use of bonding schedules.

Recommendation:

Limit the use of monetary bonds in the bail decision making process, with the presumption that all pretrial detainees are eligible for pretrial release unless due process hearing is held pursuant to Article 2 Section 19 of the Colorado Constitution and C.R.S. 16-4-101.

Discussion:

Bail is part of a larger process in which a defendant is taken into custody by law enforcement, is issued a summons or transported to the local detention facility, appears before a judicial officer, is given or denied a bail bond with or without specific conditions, and is detained in jail or released into the community until the disposition of the case.⁴ The purpose of bail, according to the American Bar Association, is to provide due process to the accused; ensure the defendant's appearance at all court hearings; and protect victims, witnesses and the community from threats, danger and interference.⁵ Financial bond is not necessary to meet the purposes of bail.

A prior recommendation from the Commission specified the development of a statewide monetary bond schedule (2008, BP-39).⁶ However, upon further study, the research shows that monetary conditions do not ensure court appearance or improve public safety. The American Bar Association asserts the following:

Regular use of bail schedules often unintentionally fosters the unnecessary detention of misdemeanants, indigents, and nondangerous defendants because they are unable to afford the sum mandated by the schedule. Such detentions are costly and inefficient, and subject defendants to a congeries of often devastating and avoidable consequences, including the loss of employment, residence, and community ties.⁷

⁴ Mamalian, Cynthia A. (March 2011). State of the Science of Pretrial Risk Assessment. Joint publication by the Pretrial Justice Institute and the U.S. Bureau of Justice Assistance. Washington, D.C. Citing Jefferson County, Colorado, Criminal Justice Planning Unit. *Bail History and Reform: An Introduction* (2009).

⁵ *Jefferson County Bail Project and Impact Study*. Presented by the Jefferson County Criminal Justice Planning Staff to the CCJJ Bail Subcommittee, on May 4, 2012.

⁶ Bail schedules provide judges with standardized money bail amounts based on the offense charged and typically regardless of the characteristics of an individual defendant (Carlson, 2011).

⁷ Carlson, Lindsay. (2011). Bail Schedules: A Violation of Judicial Discretion? American Bar Association. Available at http://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/cjsp11_bail.authcheckdam.pdf.

Research conducted in Jefferson County, Colorado found that financial bonds as low as \$50 precludes some individuals from pretrial release. This study found no negative effect on defendant outcomes when judges moved away from money bonds as compared to when judges more heavily relied on money.⁸ Jefferson County successfully eliminated the bond schedule in April 2011.

Other studies have found that financial conditions do not ensure public safety, ensure court appearance, or guarantee people will not reoffend while on pre-trial release, nor do they guarantee safety for victims.⁹ These facts have been known for nearly 50 years, as noted by Robert F. Kennedy when, as attorney general, he addressed the American Bar Association in 1964. Kennedy stated, “Repeated recent studies demonstrate that there is little—if any—relationship between appearance at trial and the ability to post bail,” citing research by the Vera Foundation in New York.¹⁰ The Commission supports the opinion of the current United States Attorney General, who stated in the matter of individuals being detained pretrial as a result of bond they cannot afford that “(a)lmost all of these individuals could be released and supervised in their communities – and allowed to pursue and maintain employment and participate in educational opportunities and their normal family lives – without risk of endangering their fellow citizens or fleeing from justice.”¹¹

Further, bond schedules do not allow for consideration of actuarial risk factors or individualized conditions of release, both of which are considered evidence-based practices. Organizations that support reform include the Association of Prosecuting Attorneys, American Bar Association, the National Association of Criminal Defense Lawyers, the American Council of Chief Defenders, the U.S. Department of Justice, the National Legal Aid and Defender Association, and the National Sheriff’s Association, among others.

⁸ Brooker, C. M. B. (2012, May). *Analyses from the Jefferson County Bail Project: Summary Report on Outcome Data*. Presented to the CCJJ's Bail Subcommittee, Denver, CO.

⁹ See Carlson, 2011.

¹⁰ Address by Attorney General Robert F. Kennedy to the Criminal Law Section of the American Bar Association, Americana Hotel, New York City, August 10, 1964.

¹¹ Eric Holder, National Symposium on Pretrial Justice: Summary Report of Proceedings (Pretrial Justice Institute: Washington, DC, 2011), see p 30.

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FY13-BL #3 Expand and improve pretrial approaches and opportunities in Colorado

Recommendation:

Expand and improve pretrial approaches and opportunities in Colorado.

Discussion:

Only 12 of 22 Colorado judicial districts have pretrial services. Even among established programs, there is a lack of consistency in services provided and a lack of information provided to crime victims, according to a brief survey undertaken by the Commission's Bail Subcommittee. Many jurisdictions continue to use a bond schedule that assigns a dollar amount based upon the criminal charge, without consideration for risk to the community or likelihood of court appearance. Pretrial service programs can investigate and verify the defendant's background, stability in the community, risk to reoffend or flee, and provide objective recommendations to the court for appropriate *individualized* release conditions that can address these concerns. These agencies also can offer supervision services to the court.

Pretrial services or, where these are not available, jail or appropriate staff should be trained to conduct actuarial risk assessments through a comprehensive interview with the defendant and, when appropriate, recommend to the court very specific release conditions that are individualized for each offender. At a minimum, the court should have access to a completed risk assessment for every defendant to inform pretrial decision making.

Many release conditions commonly assigned to defendants are unrelated to the offense, unrelated to the individual defendant, and lack clarity and specificity. Neither bail amounts nor the conditions of bond should be used to punish defendants.

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FY13-BL #4 Standardized Jail Data Collection across all Colorado Jurisdictions

Recommendation:

Implement a standardized data collection instrument in all Colorado jurisdictions and jails that includes, but is not limited to, information on total jail population, index crime, crime class, type of bond, bond amount if any, length of stay, assessed risk level, and the proportion of pretrial, sentenced and hold populations.

Discussion:

Policies and procedures for jails vary widely across jurisdictions. Consequently, there is no standardized or mandated data collection effort, leaving it impossible to obtain accurate information on population trends and possible causes for those trends. Without this basic information, it is difficult to identify statewide, regional, or local problems and solutions, particularly as these relate to facility overcrowding.

This data should be collected biannually by jail officials and forwarded to the Colorado Division of Criminal Justice which will compile the information and place it on its website.