

**PRETRIAL RELEASE TASK FORCE**  
FINAL RECOMMENDATION PRESENTED TO THE  
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE  
January 11, 2019

**FY19-PR #07. Revise the Initial Bond Hearing Process and the Considerations of Monetary Conditions of Bond [Statutory]**

**Recommendation FY19-PR #07**

For individuals who do not meet the criteria for expedited pretrial release (see Recommendation FY19-PR #06), revise the following statutory elements (in §16-4-104, -107, & -109, C.R.S.) related to the initial bond hearing process, including the considerations of the conditions of monetary bond:

- Assess the person for risk before the hearing, require the court to consider financial circumstances of persons when setting bond, and presume release on bond without monetary conditions unless no reasonable non-monetary conditions will address public safety and flight risk **[Element 7.1]**.
- Require the filing of felony charges within three days, excluding Saturdays, Sundays and legal holidays, unless good cause is shown **[Element 7.2]**.
- Require reconsideration of monetary and/or non-monetary conditions of bond in both felony and misdemeanor cases (a second look) when good cause is shown and expand the definition of bonding commissioner **[Element 7.3]**.
- Create an expedited docket for cases where the defendant is in custody on a monetary bond that he/she has not posted **[Element 7.4]**.

**Discussion**

Each “ELEMENT” (7.1 through 7.4) is described below in greater detail with its proposed statutory language immediately appending the description.

**ELEMENT 7.1: Pretrial assessment and initial considerations of monetary bond and bond conditions**

At the initial court appearance, the court shall:

- Consider the person’s risk assessment as provided by an empirically based risk assessment instrument or instruments; (current law; *See also CCJJ Recommendations FY19-PR #01 and #02*)
- Consider the individual circumstances of the defendant including his/her financial circumstances. (This consideration is supported by all recent case law.)
- Consider the nature and severity of the alleged offense)
- Consider victim input, if received. (This is always considered in bail setting, subject to the presumption of innocence.)
- Consider all of the relevant statutory factors as outlined in §16-4-103, 104 and 105, C.R.S. and §16-5-206, C.R.S. Retain the provisions that are included in current law about personal factors that the court may consider. This includes prior record and prior failures to appear (FTAs) as they relate to the statutory criteria above.
- Presume release of the person with least restrictive conditions and without the use of any financial conditions of bond, unless the court finds:
  - that the person poses a substantial risk of danger to the safety of any person or the community;
  - or
  - that there is a substantial risk that the person will not appear in court as required; or
  - that there is a substantial risk that the person will attempt to obstruct the criminal justice process; and

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- o there are no reasonable non-monetary conditions of release that will reasonably assure the safety of any person or the community, that the person will appear in court as required, and that the person will not attempt to obstruct the criminal justice process.

**Proposed Statutory Language [Element 7.1]**

In §16-4-104, C.R.S., insert new subsections (1) and (2) and delete old subsections (2) and (3); renumber and revise old subsection (1) to new subsection (4); and move old subsection (4) to subsection (3).

**16-4-104. INITIAL HEARING -TYPES OF BOND SET BY THE COURT – FACTORS FOR SETTING OF CONDITIONS OF BOND –RIGHT TO COUNSEL**

- (1) AT THE INITIAL HEARING, IF THE PERSON IS NOT RELEASED PURSUANT TO THE PROVISIONS OF 16-4-103, C.R.S., THE COURT SHALL DETERMINE THE TYPE OF BOND AND THE CONDITIONS OF RELEASE. IN MAKING THAT DETERMINATION, THE COURT SHALL PRESUME THE RELEASE OF THE PERSON WITH THE LEAST RESTRICTIVE CONDITIONS AND WITHOUT THE USE OF ANY MONETARY CONDITIONS OF BOND UNLESS THE COURT FINDS:**
- (a) THAT THE PERSON POSES A SUBSTANTIAL RISK OF DANGER TO THE SAFETY OF ANY PERSON OR THE COMMUNITY; OR**
  - (b) THAT THERE IS A SUBSTANTIAL RISK THAT THE PERSON WILL NOT APPEAR IN COURT AS REQUIRED; OR**
  - (c) THAT THERE IS A SUBSTANTIAL RISK THAT THE PERSON WILL ATTEMPT TO OBSTRUCT THE CRIMINAL PROCESS; AND**
  - (d) THERE ARE NO REASONABLE NON-MONETARY CONDITIONS OF RELEASE THAT WILL REASONABLY ASSURE THE SAFETY OF ANY PERSON OR THE COMMUNITY, THAT THE PERSON WILL APPEAR IN COURT AS REQUIRED, AND THAT THE PERSON WILL NOT ATTEMPT TO OBSTRUCT THE CRIMINAL JUSTICE PROCESS.**
- (2) IN MAKING THE DETERMINATION ABOUT THE TYPE OF BOND AND CONDITIONS OF RELEASE, THE COURT SHALL CONSIDER:**
- (a) THE PERSON’S RISK ASSESSMENT AS PROVIDED BY AN EMPIRICALLY DEVELOPED AND VALIDATED RISK ASSESSMENT INSTRUMENT OR INSTRUMENTS; (*Note: See also CCJJ Recommendations FY19-PR #01 and #02 regarding pretrial risk assessment.*)**
  - (b) THE INDIVIDUAL CIRCUMSTANCES OF THE DEFENDANT INCLUDING HIS OR HER FINANCIAL CIRCUMSTANCES;**
  - (c) THE NATURE AND SEVERITY OF THE ALLEGED OFFENSE;**
  - (d) VICTIM INPUT, IF RECEIVED;**
  - (e) ALL METHODS OF RELEASE TO AVOID UNNECESSARY PRETRIAL INCARCERATION AND TO AVOID UNNECESSARY LEVELS OF SUPERVISION AS CONDITIONS OF PRETRIAL RELEASE;**
  - (f) THE WRITTEN CRITERIA FOR PRETRIAL RELEASE AS DEVELOPED BY THE JUDICIAL DISTRICT;**
  - (g) THE EMPLOYMENT STATUS AND HISTORY OF THE PERSON IN CUSTODY;**
  - (h) THE NATURE AND EXTENT OF FAMILY RELATIONSHIPS OF THE PERSON IN CUSTODY;**
  - (i) PAST AND PRESENT RESIDENCES OF THE PERSON IN CUSTODY;**
  - (j) THE CHARACTER AND REPUTATION OF THE PERSON IN CUSTODY;**
  - (k) IDENTITY OF PERSONS WHO AGREE TO ASSIST THE PERSON IN CUSTODY IN ATTENDING COURT AT THE PROPER TIME;**

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- (l) **THE LIKELY SENTENCE, CONSIDERING THE NATURE AND THE OFFENSE PRESENTLY CHARGED, ESPECIALLY IF THE DEFENDANT IS NOT LIKELY TO BE SENTENCED TO INCARCERATION;**
  - (m) **THE PRIOR CRIMINAL RECORD, IF ANY, OF THE PERSON IN CUSTODY;**
  - (n) **ANY PRIOR FAILURES THAT ARE RELEVANT TO THE DEFENDANT'S CURRENT ABILITY TO APPEAR IN COURT;**
  - (o) **ANY FACTS INDICATING THE POSSIBILITY OF VIOLATIONS OF THE LAW IF THE PERSON IN CUSTODY IS RELEASED WITHOUT CERTAIN CONDITIONS OF RELEASE;**
  - (p) **ANY FACTS INDICATING THAT THE DEFENDANT IS LIKELY TO INTIMIDATE OR HARASS POSSIBLE WITNESSES; AND**
  - (q) **ANY OTHER FACTS TENDING TO INDICATE THAT THE PERSON IN CUSTODY HAS STRONG TIES TO THE COMMUNITY AND IS NOT LIKELY TO FLEE THE JURISDICTION.**
- (3) Because of the danger posed to any person and the community, a person who is arrested for an offense under section 42-4-1301(1) or (2)(a), C.R.S., may not attend a bail hearing until the person is no longer intoxicated or under the influence of drugs. The person shall be held in custody until the person may safely attend such hearing.
- (4) **THE TYPES OF BOND THAT MAY BE SET BY THE COURT INCLUDE:** ~~(1) The court shall determine, after consideration of all relevant criteria, which of the following types of bond is appropriate for the pretrial release of a person in custody, subject to the relevant statutory conditions of release listed in section 16-4-105. The person may be released upon execution of:~~
- (a) An unsecured personal recognizance bond **WHICH MAY INCLUDE** ~~an amount specified by the court. The court may require additional obligors on the bond as a condition of the bond.~~
  - (b) An unsecured personal recognizance bond with additional nonmonetary conditions of release designed specifically to reasonably ensure the appearance of the person in court and the safety of any person or persons or the community;
  - (c) A bond with secured monetary conditions **SUBJECT TO THE PROVISIONS OF SUBSECTION (1).** ~~when reasonable and necessary to ensure the appearance of the person in court or the safety of any person or persons or the community. The financial conditions shall state an amount of money that the person must post with the court in order for the person to be released.~~ **HOWEVER, IF THE BOND HAS MONETARY CONDITIONS, the person SHALL** ~~may be released from custody upon execution of bond in the full amount of money to be secured by any one of the following methods, as selected by the person to be released, unless the court makes factual findings on the record with respect to the person to be released that a certain method of bond, as selected by the court, is necessary to~~ **REASONABLY** ensure the appearance of the person in court and the safety of any **PERSON OR PERSONS IN THE COMMUNITY:** ~~person, persons, or the community:~~
    - (I) by a deposit with the clerk of the court of an amount of cash equal to the monetary condition of the bond;
    - (II) by real estate situated in this state with unencumbered equity not exempt from execution owned by the accused or any other person acting as surety on the bond, which unencumbered equity shall be at least one and one-half the amount of the security set in the bond;
    - (III) by sureties worth at least one and one-half of the security set in the bond; or
    - (IV) by a bail bonding agent, as defined in section 16-1-104 (3.5), C.R.S.
  - (d) A bond with secured real estate conditions when it is determined that release on an unsecured personal recognizance bond without monetary conditions will not reasonably ensure the

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appearance of the person in court or the safety of any person or persons or the community. For a bond secured by real estate, the bond shall not be accepted by the clerk of the court unless the record owner of such property presents to the clerk of the court the original deed of trust as set forth in subparagraph (IV) of this paragraph (d) and the applicable recording fee. Upon receipt of the deed of trust and fee, the clerk of the court shall record the deed of trust with the clerk and recorder for the county in which the property is located. For a bond secured by real estate, the amount of the owner's unencumbered equity shall be determined by deducting the amount of all encumbrances listed in the owner and encumbrances certificate from the actual value of such real estate as shown on the current notice of valuation. The owner of the real estate shall file with the bond the following, which shall constitute a material part of the bond:

- (I) The current notice of valuation for such real estate prepared by the county assessor pursuant to section 39-5-121, C.R.S.; and
- (II) Evidence of title issued by a title insurance company or agent licensed pursuant to article 11 of title 10, C.R.S., within thirty-five days after the date upon which the bond is filed; and
- (III) A sworn statement by the owner of the real estate that the real estate is security for the compliance by the accused with the primary condition of the bond; and
- (IV) A deed of trust to the public trustee of the county in which the real estate is located that is executed and acknowledged by all record owners of the real estate. The deed of trust shall name the clerk of the court approving the bond as beneficiary. The deed of trust shall secure an amount equal to one and one-half times the amount of the bond.

~~(2) Unless the district attorney consents or unless the court imposes certain additional individualized conditions of release as described in section 16-4-105, a person must not be released on an unsecured personal recognizance bond pursuant to paragraph (a) of subsection (1) of this section under the following circumstances:~~

- ~~(a) The person is presently free on another bond of any kind in another criminal action involving a felony or a class 1 misdemeanor;~~
- ~~(b) The person has a record of conviction of a class 1 misdemeanor within two years or a felony within five years, prior to the bail hearing; or~~
- ~~(c) The person has willfully failed to appear on bond in any case involving a felony or a class 1 misdemeanor charge in the preceding five years.~~

~~(3) A person may not be released on an unsecured personal recognizance bond if, at the time of such application, the person is presently on release under a surety bond for felony or class 1 misdemeanor charges unless the surety thereon is notified and afforded an opportunity to surrender the person into custody on such terms as the court deems just under the provisions of section 16-4-108.~~

**[NOTE: THE FOLLOWING SUBSECTION (4) IS MOVED WITHOUT MODIFICATION TO SUBSECTION (3) OF THIS SAME SECTION.]**

~~(4) Because of the danger posed to any person and the community, a person who is arrested for an offense under section 42-4-1301 (1) or (2)(a), C.R.S., may not attend a bail hearing until the person is no longer intoxicated or under the influence of drugs. The person shall be held in custody until the person may safely attend such hearing.~~

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**ELEMENT 7.2: Require the filing of felony charges within three working days**

Eliminates long and unnecessary delays in filing of felony cases after the initial advisement and bail setting by the court. Require filing within 3 working days, excluding Saturdays, and Sundays and legal holidays, unless good cause shown.

Throughout the state, courts differ as to the amount of time the DA has to file charges. Delays in this filing cause extended and unnecessary stays for persons in jail. A significant number of jurisdictions require quick turnarounds for filing of charges. Three business days is adequate time and, if the case has complicated issues or needs more investigation due to the severity of the charges, the DA can ask for additional time for good cause shown. Additionally, the parties can agree to additional time.

**Proposed Statutory Language [Element 7.2]**

Replace subsection (1) of §16-4-107, C.R.S. and delete subsection (2).

**16-4-107. TIME FRAMES FOR COMMENCEMENT OF ACTION** ~~Hearing after setting of monetary conditions of bond~~

- (1) **AFTER THE INITIAL HEARING AS PROVIDED BY 16-4-102, C.R.S., THE COURT SHALL ORDER THAT THE COMMENCEMENT OF THE CRIMINAL PROSECUTION BY THE FILING OF A COMPLAINT OR INFORMATION, PURSUANT TO THE PROVISIONS OF 16-5-101, C.R.S., SHALL TAKE PLACE WITHIN 3 DAYS OF THE INITIAL HEARING, EXCLUDING SATURDAY, SUNDAY AND LEGAL HOLIDAYS, UNLESS GOOD CAUSE IS SHOWN TO THE COURT FOR ADDITIONAL TIME OR THE PARTIES AGREE TO ADDITIONAL TIME.** ~~If a person is in custody and the court imposed a monetary condition of bond for release, and the person, after seven days from the setting of the monetary condition of bond, is unable to meet the monetary obligations of the bond, the person may file a written motion for reconsideration of the monetary conditions of the bond. The person may only file the written motion pursuant to this section one time during the pendency of the case and may only file the written motion if he or she believes that, upon presentation of evidence not fully considered by the court, he or she is entitled to a personal recognizance bond or an unsecured bond with conditions of release or a change in the monetary conditions of bond. The court shall promptly conduct a hearing on this motion for reconsideration, but the hearing must be held within fourteen days after the filing of the motion. However, the court may summarily deny the motion if the court finds that there is no additional evidence not fully considered by the court presented in the written motion. In considering the motion, the court shall consider the results of any empirically developed risk assessment instrument.~~
- (2) ~~Nothing in this section shall preclude a person from filing a motion for relief from a monetary condition of bond pursuant to section 16-4-109 at any time during the pendency of the case.~~

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**ELEMENT 7.3: Require reconsideration of bond**

Require a reconsideration of determination of monetary and/or non-monetary conditions of bond in both felony and misdemeanor cases (a second look) when good cause is shown. This should protect against unnecessary detentions for long periods of time where court might think person was able to make a monetary bond and they cannot make. Motions shall be in writing in instances of a VRA case.

Reasonableness must always be reconsidered as it is constitutionally required. This will also give the court a chance to review the non-monetary conditions of bond to see if they are reasonable and necessary as well as the least restrictive. (Note: This language will replace the 2013 language in 16-4-107, C.R.S., and merge this language with the existing language in 16-4-109, C.R.S.)

**Proposed Statutory Language [Element 7.3]**

Revise §16-4-109, C.R.S., subsections (1) through (4) and subsection (6). New paragraphs numbering, (4)(b) and (4)(c) are inserted with minor modifications to statutory language.

*(Note: Revisions introduced by FY19-PR #06 to subsection (5) are also shown here.)*

**16-4-109. HEARING AFTER SETTING OF A MONETARY CONDITION OF BOND** - reduction or increase of monetary conditions of bond - change in type of bond or conditions of bond – **definition of bonding and release commissioner** ~~definitions~~

- (1) **THE DEFENDANT, THE PROSECUTING ATTORNEY, OR THE BONDING AND RELEASE COMMISSIONER MAY ASK FOR THE REVIEW AND MODIFICATION OF ANY MONETARY OR NON-MONETARY CONDITION OF BOND IF NEW INFORMATION IS DISCOVERED THAT WAS NOT PRESENTED AT THE TIME OF THE ORIGINAL SETTING OF BOND AND CONDITIONS OF RELEASE OR IF CIRCUMSTANCES HAVE CHANGED SINCE THE COURT MADE THE BOND DETERMINATION AND THIS NEW INFORMATION OR CHANGE IN CIRCUMSTANCES HAS A BEARING ON WHETHER THE CONDITION OF BOND IS REASONABLE AND NECESSARY PURSUANT TO THE PROVISIONS OF THIS SECTION.** ~~Upon application by the district attorney or the defendant, the court before which the proceeding is pending may increase or decrease the financial conditions of bond, may require additional security for a bond, may dispense with security theretofore provided, or may alter any other condition of the bond.~~
- (2) **REQUESTS FOR REVIEW OR MODIFICATION OF A MONETARY OR NON-MONETARY CONDITION OF BOND MAY BE MADE ORALLY OR IN WRITING WITH REASONABLE NOTICE TO THE OPPOSING PARTY. NOTWITHSTANDING, IF THE CASE ALLEGES A CRIME AS DEFINED IN 24-4.1-302, C.R.S., THE REQUEST FOR REVIEW SHALL BE IN WRITING.** ~~Reasonable notice of an application for modification of a bond by the defendant shall be given to the district attorney.~~
- (3) **THE COURT SHALL HEAR THE REQUEST FOR REVIEW OF A MONETARY CONDITION OF BOND ON AN EXPEDITED BASIS AND MAKE A DETERMINATION ON THE RECORD IN ORDER THAT THE DEFENDANT MAY EXERCISE HIS RIGHT TO APPEAL PURSUANT TO 16-4-204, C.R.S. OR ANY OTHER AVAILABLE APPELLATE REMEDIES.** ~~Reasonable notice of application for modification of a bond by the district attorney shall be given to the defendant, except as provided in subsection (4) of this section.~~
- (4) (a) Upon verified application by the district attorney or a bonding **AND RELEASE** commissioner stating facts or circumstances constituting a breach or a threatened breach of any of the conditions of the bond, the court may issue a warrant commanding any peace officer to bring the defendant without unnecessary delay before the court for a hearing on the matters set forth in the application.

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- (b) Upon issuance of the warrant, the bonding **AND RELEASE** commissioner shall notify the bail bond agent of record by electronic mail to agent if available within twenty-four hours or by certified mail not more than fourteen days after the warrant is issued. At the conclusion of the hearing, the court may enter an order authorized by this section.
- (c) If a bonding **AND RELEASE** commissioner files an application for a hearing pursuant to this subsection (4), the bonding **AND RELEASE** commissioner shall notify the district attorney, for the jurisdiction in which the application is made, of the application within twenty-four hours following the filing of the application.

*[NOTE: The revision to this subsection (5) introduced by FY19-PR #06 is also shown here.].*

**(5) ~~(4) (b)~~ As used in 16-4-103(4), C.R.S. AND SUBSECTION (4) OF THIS SECTION 16-4-109, C.R.S., "BONDING AND RELEASE COMMISSIONER" this subsection (4) "bonding commissioner" means a person employed by a pretrial services program as described in section 16-4-106 (3), C.R.S., OR ANY OTHER PERSON OR PROGRAM and so designated as a bonding AND RELEASE commissioner by the chief or presiding judge of the judicial district TO CARRY OUT THE PROVISIONS OF THIS ARTICLE 4 of TITLE 16, C.R.S.**

**(6) ~~(5)~~ The district attorney AND THE DEFENDANT AND HIS OR HER COUNSEL HAVE** has the right to appear at all hearings seeking modification of the terms and conditions of bond and may advise the court on all pertinent matters during the hearing.

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**ELEMENT 7.4: Create a docket precedence**

Create a docket precedence for cases where the defendant is in custody on a monetary bond that he/she has not posted. Defendants who are detained shall have priority for trial and other evidentiary hearings over defendants who are at liberty. This priority should be reconciled with any other statutory priorities in the current law regarding domestic violence cases and sex assault cases.

In order to avoid unnecessary pretrial detention, persons in custody should be given priority in setting their cases. This will help reduce the length of stay for persons at the county jail.

**Proposed Statutory Language [Element 7.4]**

Revise §16-4-107, C.R.S. by adding subsection (2) (*NOTE: See an additional revision to this same section 107 in ELEMENT 7.2*).

**16-4-107. TIME FRAMES FOR COMMENCEMENT OF ACTION - DOCKET PRECEDENCE** ~~Hearing after setting of monetary conditions of bond~~

*[NOTE: The revision to this subsection (1), introduced in ELEMENT 7.2, is also shown here.]*

**(1) AFTER THE INITIAL HEARING AS PROVIDED BY 16-4-102, C.R.S., THE COURT SHALL ORDER THAT THE COMMENCEMENT OF THE CRIMINAL PROSECUTION BY THE FILING OF A COMPLAINT OR INFORMATION, PURSUANT TO THE PROVISIONS OF 16-5-101, C.R.S., SHALL TAKE PLACE WITHIN 3 DAYS OF THE INITIAL HEARING, EXCLUDING SATURDAY, SUNDAY AND LEGAL HOLIDAYS, UNLESS GOOD CAUSE IS SHOWN TO THE COURT FOR ADDITIONAL TIME OR THE PARTIES AGREE TO ADDITIONAL TIME.**

**(2) DEFENDANTS IN CUSTODY SHALL HAVE SCHEDULING PRECEDENCE OVER ALL OTHER MATTERS FOR PURPOSES OF LITIGATED HEARINGS AND TRIALS, SUBJECT TO THE PROVISIONS OF 18-3-411, C.R.S. AND SPEEDY TRIAL CONSIDERATIONS.**

~~(1) If a person is in custody and the court imposed a monetary condition of bond for release, and the person, after seven days from the setting of the monetary condition of bond, is unable to meet the monetary obligations of the bond, the person may file a written motion for reconsideration of the monetary conditions of the bond. The person may only file the written motion pursuant to this section one time during the pendency of the case and may only file the written motion if he or she believes that, upon presentation of evidence not fully considered by the court, he or she is entitled to a personal recognizance bond or an unsecured bond with conditions of release or a change in the monetary conditions of bond. The court shall promptly conduct a hearing on this motion for reconsideration, but the hearing must be held within fourteen days after the filing of the motion. However, the court may summarily deny the motion if the court finds that there is no additional evidence not fully considered by the court presented in the written motion. In considering the motion, the court shall consider the results of any empirically developed risk assessment instrument.~~

~~(2) Nothing in this section shall preclude a person from filing a motion for relief from a monetary condition of bond pursuant to section 16-4-109 at any time during the pendency of the case.~~