



FY2013 RECOMMENDATION/FY13-BL02 DISCOURAGE THE USE OF FINANCIAL BOND FOR PRETRIAL DETAINEES AND REDUCE THE USE OF BONDING SCHEDULES.

Status: Implementation Complete

Actions/Updates

2013 ACTION/IMPLEMENTATION

Action on this recommendation was completed with the passage of House Bill 13-1236.

Description

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.

Agencies Responsible

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. * 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. ** 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). *** 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.^

Research conducted in Jefferson County, Colorado found that financial bonds as low as \$50 precludes some individuals from pretrial release. This study found no difference in outcomes of individuals posting financial bonds compared to those released without a financial bond; however, those with a money bond were less likely to secure pretrial release.^ ^ 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.^^ 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.# 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.”###

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 the elimination of money bonds 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.

Footnotes

**Mamalian, C.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).*

***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.*

****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).*

*Carlson, L. (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.

^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.

^^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.

#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.

##Holder, E. (2012). *National Symposium on Pretrial Justice: Summary Report of Proceedings*. Bureau of Justice Assistance: Washington, DC.