



**FY2019 RECOMMENDATION/FY19-PR01 Require Pretrial Risk Assessment Tools  
[Statutory]**

**Status:** Cannot Implement

**Actions/Updates**

**2020 UPDATE**

This recommendation was withdrawn and replaced by a subsequent recommendation. See CCJJ Recommendation FY20-PR #03 (Implement Bail Bond Reform[Statutory]).

**2019 UPDATE**

This recommendation requires statutory change. This recommendation was included in House Bill 2019-1226 (Bond Reform; Sponsors: Reps. Herod / Sooper & Sen. Lee). The bill was introduced March 8, 2019 and, although it passed in the House and two Senate committees, the bill "died on the calendar" without further action by the Senate at the end of the FY 2019 Legislative Session.

**Description**

Amend §16-4-103 (3) (b), C.R.S., to require that Pretrial Risk Assessment shall be available and utilized by Judicial Officers in all counties throughout Colorado for purposes of setting bond and establishing conditions of release for felony and misdemeanor level offenses. The court shall not use the results of any such instrument as the sole basis for setting type of bond and conditions of release. Other criteria may include those circumstances contained in §16-4-103 (5), C.R.S.

**Agencies Responsible**

Office of the State Court Administrator

**Discussion**

[The Proposed Statutory Language may be found in the related "Recommendation Text."]

Enacted in 2013, current statute encourages, however falls short of requiring, the use of risk assessment in all counties in Colorado. A disparity between jurisdictions that utilize pretrial risk assessment versus those that do not creates inequity at a critical stage of a criminal case (See Table 1 at the link to the related "Recommendation Text"). Research has identified that the pretrial period has significant impacts on the case and individuals accused. While the reasons that risk assessment is not available within a jurisdiction may vary and may be numerous, a common variable is the lack of resources.

A May 2015 "Issue Brief"[Footnote: 1] by the Pre-trial Justice Institute provides a concise overview of pretrial risk assessment and the value of identifying defendant risk for pretrial service decisions:

"An empirically-derived pretrial risk assessment tool is one that has been demonstrated through an empirical research study to accurately sort defendants into categories showing the increased likelihood of a successful pretrial release - that is, defendants make all their court appearances and are not arrested on new charges.

A defendant's risk level should be used to guide two decisions: 1) the decision to release or detain pretrial; and 2) if released, the assignment of appropriate release conditions, such as pretrial supervision. Recent research has shed new light on the importance of accurately assessing risks in making these decisions.

In one study, researchers found that low-risk defendants who were held in jail for just 2 to 3 days were 39% more likely to be arrested than those who were released on the first day. Those who were held 4 to 7 days were 50% more likely to be arrested, and those held 8 to 14 days were 56% more likely. The same patterns hold for medium-risk defendants held for short periods.[Footnote: 2]

That study also found that low-risk defendants who were held in jail throughout the pretrial period were 27% more likely to recidivate within 12 months than low-risk defendants who were released pretrial.[Footnote: 3]

Another study found that low-risk defendants who were detained pretrial were five times more likely to receive a jail sentence and four times more likely to receive a prison sentence than their low-risk counterparts who were released pretrial. Medium-risk defendants who were detained pretrial were four times more likely to get a jail sentence and three times more likely to get a prison sentence.[Footnote: 4]

Research has also indicated that putting conditions of non-financial release on low-risk defendants actually increases their likelihood of failure on pretrial release. Rather, the most appropriate response is to release these low-risk defendants with no or minimal specific conditions.[Footnote: 5]

Other studies have found that higher-risk defendants who are released with supervision have higher rates of success on pretrial release. For example, one study found that, when controlling for other factors, higher-risk defendants who were released with supervision were 33% less likely to fail to appear in court than their unsupervised counterparts.[Footnote: 6]

These studies, taken together, demonstrate the longer-term implications of not accurately and quickly identifying, and then acting upon to mitigate, defendants' risk.

Another reason to utilize a defendant's risk score is to make the best use of scarce resources. It is a waste of resources to over-apply conditions to people for whom those conditions are unnecessary to ensure compliance. It is a good use of resources to provide supervision in the community to someone who needs it, when compared to the cost of housing, feeding and providing medical care in jail. Supervision can cost \$3 to \$6 per day. On the other hand, the housing, feeding, and medical care costs of jail are approximately \$50 or more per day."

A report on promising practices in pretrial services[Footnote: 7] by the Pretrial Justice Institute and the American Probation and Parole Association lists multiple organizations that endorse the use of pretrial risk assessment as a component of a pretrial services program to identify the appropriate options for pretrial release: the National Association of Counties, the American Bar

Association, the National Association of Pretrial Services Agencies, American Probation and Parole Association, and the International Association of Chiefs of Police.

In summary, the pretrial release decision, controlling for all other factors, has a significant impact on the outcome of a case. The pretrial release decision is often made quickly, based on salient case facts that may not be effective predictors of pretrial release success with the actual release determined by the defendant's ability to pay. Charge-based bond schedules usually do not distinguish between low, medium and high-risk individuals and, as described above, very short periods of pretrial detention of lower risk defendants can result in increased chances of failure. Only evidence-based risk assessment that is provided to the court can help communities distinguish among defendants of varying risk levels.

### **Footnotes**

[1] Pretrial Justice Institute. (2015, May). Issue Brief-Pretrial Risk Assessment: Science Provides Guidance on Assessing Defendants. Rockville, MD: PJI. (See, [university.pretrial.org/viewdocument/issue-brief-pretrial-1](http://university.pretrial.org/viewdocument/issue-brief-pretrial-1))

[2] Lowenkamp, C., VanNostrand, M., & Holsinger, A. (2013). The Hidden Costs of Pretrial Detention. Houston, TX: Laura and John Arnold Foundation. (See, [nicic.gov/hidden-costs-pretrial-detention](http://nicic.gov/hidden-costs-pretrial-detention))

[3] See Footnote #2.

[4] Lowenkamp, C., VanNostrand, M., & Holsinger, A., (2013). Investigating the Impact of Pretrial Detention on Sentencing Outcomes. Houston, TX: Laura and John Arnold Foundation. (See, [nicic.gov/investigating-impact-pretrial-detention-sentencing-outcomes](http://nicic.gov/investigating-impact-pretrial-detention-sentencing-outcomes))

[5] VanNostrand, M., & Keebler, G. (2009). Pretrial risk assessment in the federal court. Federal Probation Journal, 73 (2). (See, [scourts.gov/federal-probation-journal/2009/09/pretrial-risk-assessment-federal-court](http://scourts.gov/federal-probation-journal/2009/09/pretrial-risk-assessment-federal-court))

[6] Lowenkamp, C., & VanNostrand, M. (2013). Exploring the Impact of Supervision on Pretrial Outcomes. Houston, TX: Laura and John Arnold Foundation. (See, [nicic.gov/exploring-impact-supervision-pretrial-outcomes](http://nicic.gov/exploring-impact-supervision-pretrial-outcomes))

[7] Pretrial Justice Institute & American Probation and Parole Association. (2011). Promising Practices in Providing Pretrial Services Functions within Probation Agencies: A User's Guide. Rockville, MD: PJI & Lexington: KY: APPA. (See, [university.pretrial.org/viewdocument/promising-practices](http://university.pretrial.org/viewdocument/promising-practices))