



**FY2019 RECOMMENDATION/FY19-PR07 Revise the Initial Bond Hearing Process and the Considerations of Monetary Conditions of Bond [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This recommendation was withdrawn and replaced by a subsequent recommendation.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**

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].

**Agencies Responsible**

Judicial Districts

**Discussion**

[The "Proposed Statutory Language" for each "ELEMENT" (7.1 through 7.4) may be found in the related "Recommendation Text."]

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
  - 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.

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.

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.)

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.