



**FY2019 RECOMMENDATION/FY19-PR09 Clarify Public Defender and District Attorney Involvement in Bail Hearings [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This recommendation was withdrawn and replaced by a subsequent recommendation.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**

Append §16-4-104, C.R.S., to clarify in statute that a person is entitled to counsel at the initial bail setting hearing. Clarify that counsel shall have adequate time to prepare for an individualized hearing on bail. Retain language that the district attorney has the right to appear and pretrial information shall be shared.

**Agencies Responsible**

Prosecuting attorneys, Public defenders, and/or Alternate Defense Counsel.

**Discussion**

Pursuant to CJD 04-04 [Footnote: 1], if a person is in custody and cannot post or is not allowed bail, the Public Defender, or Alternate Defense Counsel if the Public Defender has determined that a conflict exists and has notified ADC that conflict representation is necessary, may automatically elect to represent that person and will notify the court, either verbally or in writing, of the circumstances. The person need not complete a JDF 208[Footnote: 2] until and unless the person is released from custody. If the person is released from custody, then all provisions under Section II, Indigency Determination – Out of Custody, apply.

However, in certain jurisdictions, the court is not allowing PD to appear for first advisements or not notifying the PD when people are in custody and a hearing to set bond is to be held. The need for counsel is important at all critical stages and bail setting is a critical stage. Also, the

courts cannot give a pro forma gesture to Gideon and the need for adequate representation by not allowing counsel enough time to interview and prepare for a bail hearing.

Therefore, it is important to clarify the statutory language to allow for public defenders to appear at all first appearances and for all bail setting hearings for persons in custody. The statute should also require the court to notify the state public defender for that jurisdiction of all bail setting hearings and require the court to give the public defender/defense counsel sufficient time prior to all first appearances to interview clients in order that they might present client-specific individualized bail arguments to the court.

The language also needs to be clear that the DA has the right to be present at all hearings on bail and that the information from pretrial services or other investigation shall be provided to both parties.

### **Footnotes**

[1] Chief Justice Directive, 04-04: Appointment of State-Funded Counsel in Criminal Cases and for Contempt of Court. (See “Chief Justice Directives” at, [courts.state.co.us/Courts/Supreme\\_Court/cjds/index.cfm](http://courts.state.co.us/Courts/Supreme_Court/cjds/index.cfm))

[2] Form JDF 208: Application for Public Defender, Court-Appointed Counsel, or Guardian Ad Litem. (See, “Apply for a Public Defender” at, [courts.state.co.us/Forms/Forms\\_List.cfm?Form\\_Type\\_ID=256](http://courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=256))