



FY2020 RECOMMENDATION/FY20-PR03 Implement Bail Bond Reform [Statutory]

Status: Implementation Unknown

Actions/Updates

2023 UPDATE (JUNE)

During the FY 2023 Legislative Session, Senate Bill 2023-158 to reauthorize the Colorado Commission on Criminal and Juvenile Justice (CCJJ) was postponed indefinitely on May 7, 2023. Therefore, with the sunset of the Commission, all activities of the CCJJ ceased on June 30, 2023.

No further monitoring of CCJJ recommendations will occur.

2020 UPDATE (JUN)

Aspects of this recommendation were included as part of Senate Bill 2020-161. The bill was approved by the Senate Judiciary Committee, but during the delayed and abbreviated FY2020 legislative session due to COVID-19, the bill was postponed indefinitely by the Senate Appropriations Committee on June 10, 2020.

2020 UPDATE (FEB)

Aspects of this recommendation were included as part of Senate Bill 2020-161. The bill was introduced February 4, 2020 and is under consideration.

2020 UPDATE (JAN)

This recommendation requires statutory change. This recommendation was approved by the Commission on January 10, 2020 and is first applicable for action during the FY 2020 legislative session. This recommendation is related to Recommendations FY20-PR #01 and FY20-PR #02.

2020 NOTE

This recommendation replaced several previous CCJJ Recommendations:

FY19-PR #01 (Require Pretrial Risk Assessment Tools [Statutory])

FY19-PR #02 (Implement Pretrial Risk Assessment Processes and Training [Policy])

FY19-PR #03 (Expand Pretrial Services Programs Statewide [Statutory])

FY19-PR #04 (Create A Pretrial Services Alternative for Smaller Jurisdictions [Statutory])

FY19-PR #06 (Establish an Expedited Pretrial Release Process [Statutory])

FY19-PR #07 (Revise the Initial Bond Hearing Process and The Considerations of Monetary Conditions of Bond [Statutory])

FY19-PR #09 (Clarify Public Defender and District Attorney Involvement in Bail Hearings [Statutory])

Description

Amends, appends, or deletes and replaces several sections of statute related to pretrial services and bail/bond. This recommendation combines 14 pretrial and bond-related elements that address:

- pretrial risk assessment (PRA) [ELEMENT 3.1]
- PRA use and data collection [ELEMENT 3.2]
- expansion of pretrial services statewide [ELEMENT 3.3]
- expansion of the use of summons [ELEMENT 3.4]
- bail bond violations [ELEMENT 3.5]
- release conditions [ELEMENT 3.6]
- expedited pretrial release process [ELEMENT 3.7]
- pretrial services funding, standards, assessment and training [ELEMENT 3.8]
- initial bond hearing process and monetary conditions of bond [ELEMENT 3.9]
- public defender and district attorney involvement in bail hearings [ELEMENT 3.10]
- training for pretrial stakeholders [ELEMENT 3.11]
- expedited appeal process [ELEMENT 3.12]
- telejustice program fund [ELEMENT 3.13]
- pretrial community advisory boards [ELEMENT 3.14]

Each "ELEMENT" (3.1 through 3.14) description and Draft Statutory Language can be found in the "Recommendation Text."

Agencies Responsible

Colorado General Assembly, Division of Criminal Justice, Office of the State Court Administrator, judicial districts, and pretrial services entities.

Discussion

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 page 17, Table 1). 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.

Positive Pretrial Outcomes. A report by the Legislative Auditor General (State of Utah) profiles jurisdictions that have undertaken pretrial reform:

“An increasing number of jurisdictions are using risk-based decision-making instruments to enhance pretrial decision success. Studies from four jurisdictions using pretrial risk assessments, along with other pretrial programs, show enhanced court attendance and public safety while releasing more defendants and saving money:

Washington DC

- Savings – \$182 a day per defendant released pretrial rather than incarcerated
- Release Rate – 88 percent of pretrial defendants released
- Public Safety – 91 percent of defendants remain arrest- free pretrial
- Court Appearance – 90 percent of defendants made all scheduled court appearances

Kentucky

- Savings – Up to \$25 million per year
- Release Rate – 73 percent of pretrial defendants released
- Public Safety – 89 percent did not commit crimes while released
- Court Appearance – 84 percent appearance rate

Mesa County, CO

- Savings – \$2 million per year
- Release Rate – Pretrial jail population dropped by 27 percent
- Public Safety – Uncompromised despite an increase in the number of defendants released
- Court Appearance – 93 percent of lower-risk defendants and 87 percent of high-risk defendants made all court appearances before trial

Lucas County, OH

- Savings – not available
- Release Rate – Doubled from 14 to 28 percent
- Public Safety – Defendants arrested reduced by half from 20 percent to 10 percent.
- Court Appearance – Increased by 12 percent from 59 percent to 71 percent.

These examples demonstrate how jurisdictions have leveraged evidence-based decision-making tools to reduce jail populations, crime rates, and taxpayer expense while also improving court appearance rates. Therefore, a growing number of national organizations support the adoption of risk-based decision-making.” [Footnote8]

The broad implication of failing to provide pretrial supervision programs in all counties is the impact on state recidivism rates and, subsequently, the long-term effect on the state budget. With pretrial detention for low risk offenders, of even two days, predicting an increase in long-term recidivism, failure to manage the pretrial population impacts state recidivism rates, prison population and costs to the entire state system. When seen in this context, from a system's forecasting perspective, the investment in pretrial services saves the state money and enhances public safety.

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)

[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)

[3] See Footnote #1.

[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)

[5] VanNostrand, M., & Keebler, G. (2009). Pretrial risk assessment in the federal court. *Federal Probation Journal*, 73 (2). (See, uscourts.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)

[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)

[8] Office of the Legislative Auditor General: State of Utah. (2017). A Performance Audit of Utah's Monetary Bail System (Report #2017-01). (Retrieved from, university.pretrial.org/viewdocument/a-performance-audit-of-utahs-moneta)