

PRETRIAL RELEASE TASK FORCE
FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
November 9, 2018

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

Recommendation FY19-PR #01

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.

Proposed Statutory Language

Amend C.R.S., §16-4-103 (3) (b). Setting and selection type of bond-criteria.

(3) (b) In determining the type of bond and conditions of release, **THE COURT SHALL CONSIDER AN EMPIRICALLY DEVELOPED AND VALIDATED RISK ASSESSMENT** ~~if practicable and available in the jurisdiction, the court shall use an empirically developed risk assessment~~ instrument designed to improve pretrial release decisions by providing to the court information that classifies a person in custody based upon predicted level of risk of pretrial failure. **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 CONTAINED IN SUBSECTION (5) OF THIS SECTION.**

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 3, 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*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

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)

PRETRIAL RELEASE TASK FORCE
FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
November 9, 2018

were 56% more likely. The same patterns hold for medium-risk defendants held for short periods.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.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.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.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.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 services⁷ 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.

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 #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)

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)

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)

PRETRIAL RELEASE TASK FORCE
 FINAL RECOMMENDATION PRESENTED TO THE
 COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
 November 9, 2018

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.

Table 1. Colorado counties with or without pretrial services and/or assessment (October 2017).

Summary Sheet Regarding Pretrial Services in Colorado Colorado - 22 Judicial Districts, 64 Counties	
Counties with Pretrial Service or Risk Assessment Instrument (CPAT used unless otherwise noted) (27)	Counties with no pretrial services or risk assessment (37)
Denver	Gilpin
Jefferson	Huerfano
El Paso (limited service through sheriff's department)	Las Animas
La Plata (sheriff's department)	Teller
Larimer	Clear Creek
Garfield	Eagle
Pitkin (Garfield does CPAT with county providing contract supervision)	Lake
Pueblo (contract)	Archuleta – no jail
Custer (sheriff's department)	San Juan – no jail
Fremont (sheriff's department)	Delta
Alamosa (contract)	Gunnison
Costilla (informal through sheriff's department)	Hinsdale – no jail
Logan (contract)	Montrose
Morgan (contract)	Ouray – no jail
Prowers (supervision only through probation)	San Miguel
Baca (supervision only through probation)	Jackson
Bent (CPAT done by court, no pretrial supervision)	Rio Blanco
Crowley (CPAT done by court, no pretrial supervision)	Chaffee
Otero (CPAT done by court, no pretrial supervision)	Park
Adams	Conejos
Broomfield	Mineral - not using its jail
Arapahoe (uses county developed assessment tool)	Kit Carson
Douglas (uses Arapahoe's assessment tool)	Grand
Weld	Elbert
Boulder	Lincoln
Mesa	Dolores
Montezuma	Rio Grande
	Saguache
	Phillips
	Sedgwick
	Washington
	Yuma
	Moffat
	Routt
	Cheyenne
	Kiowa
	Summit

Prepared by: Maureen A. Cain, Colorado Criminal Defense Institute October 2017