

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

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

Recommendation FY19-PR #03

Amend §16-4-106, C.R.S., such that pretrial services programs shall exist in all counties in Colorado and the Colorado General Assembly shall create a state formula funding program to incentivize local jurisdictions (counties) to develop and support pretrial programs and services. Jurisdictions without pretrial programs shall be prioritized to receive funding. The recommendation includes these elements:

- On or before July 1, 2021, pretrial services programs shall be established within each of Colorado's counties. Counties may directly provide pretrial services or enter into agreements with other municipalities, counties or other entities to provide such services.
- The Office of the State Court Administrator in consultation with the Colorado Association of Pretrial Service Agencies (CAPS) shall develop minimum standards governing the operation of pretrial service programs.
- Any pretrial services program established pursuant to this recommendation shall, at a minimum:
 - provide the Court with an empirically developed and validated pretrial risk assessment for the purpose of setting bond and establishing conditions of release,
 - provide research-based supervision services to mitigate pretrial misconduct, such as court date reminder notification, and
 - align with legally- and evidence-informed practices found in the CAPS standards.

Proposed Statutory Language

Amend C.R.S., §16-4-106. Pretrial services programs **(3) and (4)** and add **(3.5)**.

(3) To reduce barriers to the pretrial release of persons in custody whose release on bond with appropriate conditions reasonably assures court appearance and public safety, all counties and cities and counties **SHALL DEVELOP BY JULY 1, 2021** ~~are encouraged to develop~~ a pretrial services program in consultation with the chief judge of the judicial district in an effort to establish a pretrial services program that may be utilized by the district court of such county or city and county. Any pretrial services program must be established pursuant to a plan formulated by a community advisory board created for such purpose and appointed by the chief judge of the judicial district. [...]

(3.5) (a) (I) A STATE FORMULA FUNDING PROGRAM SHALL BE CREATED TO ENABLE LOCAL JURISDICTIONS TO DEVELOP AND SUSTAIN PRETRIAL PROGRAMS AND SERVICES. JURISDICTIONS WITHOUT PRETRIAL PROGRAMS SHALL BE PRIORITIZED TO RECEIVE FUNDING.

(II) JURISDICTIONS MAY DIRECTLY PROVIDE PRETRIAL SERVICES OR ENTER INTO AGREEMENTS WITH OTHER ENTITIES TO PROVIDE SUCH SERVICES.

(b) THE OFFICE OF THE STATE COURT ADMINISTRATOR IN CONSULTATION WITH THE COLORADO ASSOCIATION OF PRETRIAL SERVICES SHALL DEVELOP MINIMUM STANDARDS GOVERNING THE OPERATION OF PRETRIAL SERVICE PROGRAMS.

(4) Any pretrial services program approved pursuant to this section must meet **THE MINIMUM STANDARDS PURSUANT TO SUBSECTION (3.5)** and the following criteria:

[Note! Integrate where appropriate in...§16-4-106(4)(c) and (5) and any other relevant statutes.]

- **PROVIDE THE COURT WITH AN EMPIRICALLY DEVELOPED AND VALIDATED PRETRIAL RISK ASSESSMENT FOR THE PURPOSE OF SETTING BOND AND ESTABLISHING CONDITIONS OF RELEASE;**
- **PROVIDE RESEARCH-BASED SUPERVISION SERVICES TO MITIGATE PRETRIAL MISCONDUCT, SUCH AS COURT DATE REMINDER NOTIFICATION; AND**
- **ALIGN SUCH SERVICES WITH LEGALLY- AND EVIDENCE-INFORMED PRACTICES FOUND IN THE COLORADO ASSOCIATION OF PRETRIAL SERVICES STANDARDS.**

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Discussion

Pretrial Supervision strategies to mitigate risk and increase pretrial success are not available in each county throughout the state. Several counties have developed successful pretrial release programs and services to reduce pretrial misconduct. While the counties that operate pretrial services represent a significant percentage of the criminal case filings, a need exists to ensure services are available throughout each jurisdiction in Colorado. Pretrial policy has recently shifted away from charge-based release decisions towards risk-based release decisions that use evidence-based risk assessment.

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 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

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 #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, courts.gov/federal-probation-journal/2009/09/pretrial-risk-assessment-federal-court)

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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 [Note: This same study found that moderate- and high-risk defendants who received pretrial supervision were more likely to appear in court, and all defendants who were supervised pretrial for 180 days or more were less likely to be arrested for new criminal activity.]

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."

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.

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)

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- 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.”⁷

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 systems forecasting perspective, the investment in pretrial services saves the state money and enhances public safety.

⁷ 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)