

**PRETRIAL RELEASE TASK FORCE**  
FINAL RECOMMENDATION PRESENTED TO THE  
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE  
January 11, 2019

**FY19-PR #06. Establish an Expedited Pretrial Release Process [Statutory]**

**Recommendation FY19-PR #06**

Modify §16-4-102 and §16-4-103, C.R.S., to establish, through a locally-determined research-based administrative order, an expedited screening process for persons arrested for an offense committed in that jurisdiction which shall be conducted as soon as practicable upon, but no later than 24 hours after, arrival of a person at the place of detention, allowing for the immediate release of certain low/medium risk persons. If a person does NOT meet the criteria for release as determined by administrative order, the person SHALL BE HELD until the initial court appearance. Also, in §16-4-109, C.R.S., expand the definition of “bonding commissioner.”

Screening Process and Criteria: Expedited Release

- Each Judicial District shall develop, by December 1, 2019, a screening process to assess a person upon arrival at the county jail for consideration of immediate release without monetary conditions (on a PR bond or on a summons), without appearing before the court, pursuant to release criteria developed within the judicial district.
- Such criteria shall be developed by each judicial district, in conjunction with all stakeholders (five identified in statute and others at the discretion of the Chief Judge; *see proposed §16-4-103(1), C.R.S.*) and the State Court Administrator’s Office, and implemented through the administrative order. The criteria shall be objective and shall be guided by the principles of release as outlined in §16-4-104, C.R.S. (*See also CCJJ Recommendations FY19 PR #01 and #02 regarding pretrial risk assessment.*)
- The pretrial assessment process shall not involve extra-judicial decision-making by persons doing the assessment. As is current practice in many jurisdictions in Colorado, a matrix or other objective decision-making scheme should be developed to implement the statutory guiding principles.
- The screening process shall occur in the jurisdiction where the offense occurred or, if under warrant, in the jurisdiction where the warrant was issued as soon as practicable, but no later than 24 hours, after the individual is received at the county jail, detention facility or other location where the screening is to occur. It is anticipated that the person will be released within 24 hours.<sup>1</sup>
- When developing the criteria for each judicial district, the Chief Judge and the stakeholders shall:
  - incorporate the standards as prepared by the Office of the State Court Administrator; and
  - consider the practices in all jurisdictions within and throughout the state to promote some state-wide consistency in implementation, with deviation from core practices only to the extent that it is necessary to address specific issues that exist with the jurisdiction.
- The guiding principles for the development of the screening process criteria promulgated by the chief judge are “legal and judicial” in nature. The goals for these changes to the screening process are:
  - to provide for the release, as soon as possible, of those persons who would have been recommended for release at court hearing;
  - that decision-making remain local, but provide certain state-wide standards guiding the decision-making that will incorporate best practices and the research into locally developed criteria;

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<sup>1</sup> For example, California requires release within 24 hours of booking when there is a pre-court appearance assessment providing for release, and, for some misdemeanors, within 12 hours of booking without a risk assessment (See [leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB10](http://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB10); California Senate Bill - 10 (2017-2018)).

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- to allow for assessment to take place before the person is placed into regular jail pod/population which involves much more paperwork and processing and resulting in a more complicated release process; and
- to reduce the negative consequences to the person who does not need to be placed in a pod/population.
- Local law enforcement shall be provided the criteria for each judicial district they serve so that the use of summons can be encouraged and so that law enforcement can properly advise the public and any victim of the criteria used.

Administrative Order: Release Guidance

The Office of the State Court Administrator shall be responsible for developing state-wide guidance for release through a local administrative order after review of the relevant research and best practices models throughout the country. In the administrative order the Chief Judge shall designate a person, agency or program:

- for each jail within the judicial district who shall conduct the assessment process in order to screen persons taken into custody by law enforcement officials; and
- that has no conflicts in the delivery of these services and that is authorized to release persons assessed eligible for release pursuant to the criteria without financial conditions of bond, but with the standard and statutorily-mandated bond conditions and any other appropriate and necessary non-financial conditions that will reasonably assure court appearance and safety of any person or the community or on a summons to appear. That person shall be a bonding and release commissioner. The chief judge is always the final decision-maker regarding the criteria issued in accordance with the administrative order.

The development of the guidance for administrative orders by the Office of the State Court Administrator should be informed by research regarding:

- The impact of detention on low-risk persons and recidivism;
- The national and state data and research regarding the use of non-financial conditions of bond as it relates to safety of any person or the community and appearance rates; and
- The relevant case law and national best practices regarding the use of financial conditions of bond.

**Proposed Statutory Language**

Revise §16-4-102, C.R.S., rewrite the entirety of §16-4-103, C.R.S., and revise the definition of “bonding commissioner” in §16-4-109, C.R.S. *[Note: The existing section to be deleted, §16-4-103, C.R.S., may be found at the end of this document.]*

16-4-102. Right to bail - before conviction

Any person **WHO IS ARRESTED AND HAS NOT BEEN RELEASED PURSUANT TO 16-4-103, C.R.S.** ~~in~~ custody, and for whom the court has not set bond and conditions of release pursuant to the applicable rule of criminal procedure, and who is not subject to the provisions of section 16-4-101 (5), has the right to a hearing to determine bond and conditions of release. ~~A person in custody may also request a hearing so that bond and conditions of release can be set. Upon receiving the request, the judge shall notify the district attorney immediately of the arrested person's request, and the district attorney shall have the right to attend and advise the court of matters pertinent to the type of bond and conditions of~~

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release to be set. The judge shall also order the appropriate law enforcement agency having custody of the prisoner to bring him or her before the court forthwith, and the judge shall set bond and conditions of release if the offense for which the person was arrested is bailable. It shall not be a prerequisite to bail that a criminal charge of any kind has been filed.

16-4-103. Setting and selection type of bond - **DEVELOPMENT OF CRITERIA BY EACH JUDICIAL DISTRICT AND IMPLEMENTATION OF AN ASSESSMENT AND RELEASE PROGRAM.** ~~criteria.~~

- (1) EACH JUDICIAL DISTRICT SHALL DEVELOP, ON OR BEFORE DECEMBER 1, 2019, A PRETRIAL RELEASE SCREENING PROCESS TO ASSESS EACH PERSON AS SOON AS PRACTICABLE BUT NO LATER THAN 24 HOURS AFTER ADMISSION TO A DETENTION FACILITY. FURTHER, EACH JUDICIAL DISTRICT SHALL DEVELOP WRITTEN CRITERIA ALLOWING FOR THE IMMEDIATE PRETRIAL RELEASE OF CERTAIN DETAINED PERSONS, ON A SUMMONS OR AN UNSECURED PERSONAL RECOGNIZANCE BOND WITHOUT MONETARY CONDITIONS, AFTER THE PRETRIAL ASSESSMENT IS COMPLETED AND WITHOUT AN INITIAL HEARING BEFORE THE COURT. THE CRITERIA FOR RELEASE SHALL BE DEVELOPED IN CONJUNCTION WITH ALL LOCAL STAKEHOLDERS, WHICH SHALL INCLUDE BUT NOT BE LIMITED TO A REPRESENTATIVE OF THE DISTRICT ATTORNEY, THE PUBLIC DEFENDER, THE SHERIFF'S DEPARTMENT, THE PRETRIAL SERVICES PROGRAM, A VICTIM ADVOCATE AND THE STATE COURT ADMINISTRATOR OFFICE, AND SHALL BE IMPLEMENTED THROUGH ADMINISTRATIVE ORDER OF THE CHIEF JUDGE OF THAT JUDICIAL DISTRICT. THE CRITERIA SHALL OUTLINE THE NON-MONETARY CONDITIONS OF BOND REASONABLY NECESSARY TO ASSURE COURT APPEARANCE AND SAFETY OF ANY PERSON OR THE COMMUNITY BASED ON THE ASSESSMENT.**
- (2) THE OFFICE OF THE STATE COURT ADMINISTRATOR SHALL BE RESPONSIBLE FOR DEVELOPING STATE-WIDE STANDARDS AND GUIDELINES FOR THE DEVELOPMENT OF BOTH THE PRETRIAL RELEASE SCREENING (Note: See also CCJJ Recommendation FY19 PR #01.) AND THE WRITTEN CRITERIA FOR PRETRIAL RELEASE AS IMPLEMENTED THROUGH ADMINISTRATIVE ORDER IN EACH JUDICIAL DISTRICT, AS PROVIDED IN SECTION (1). THE STATE-WIDE STANDARDS AND GUIDELINES SHALL BE DEVELOPED IN CONJUNCTION WITH A REVIEW OF THE RELEVANT RESEARCH AND BEST PRACTICES MODELS THROUGHOUT THE COUNTRY, WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO:**
  - (a) THE IMPACT OF DETENTION ON LOW-RISK PERSONS AND RECIDIVISM;**
  - (b) THE NATIONAL AND STATE DATA AND RESEARCH REGARDING THE USE OF NON-MONETARY CONDITIONS OF BOND AS IT RELATES TO SAFETY OF ANY PERSON OR THE COMMUNITY AND APPEARANCE RATES; AND**
  - (c) THE RELEVANT CASE LAW AND NATIONAL BEST PRACTICES REGARDING THE USE OF MONETARY CONDITIONS OF BOND.**
- (3) WHEN DEVELOPING THE PRETRIAL RELEASE SCREENING PROCESS AND THE WRITTEN CRITERIA FOR PRETRIAL RELEASE, THE CHIEF JUDGE OF THE JUDICIAL DISTRICT AND THE LOCAL STAKEHOLDERS SHALL:**
  - (a) DEVELOP CRITERIA CONSISTENT WITH THE PROVISIONS OF 16-4-104, C.R.S., AND WHICH ARE OBJECTIVE IN NATURE TO PROVIDE FOR CONSISTENT AND FAIR IMPLEMENTATION;**
  - (b) CONSIDER THE STANDARDS AND GUIDELINES AS PREPARED BY THE OFFICE OF THE STATE COURT ADMINISTRATOR; AND**
  - (c) CONSIDER THE PRACTICES IN ALL JURISDICTIONS WITHIN AND THROUGHOUT THE STATE TO ALLOW FOR SOME STATE-WIDE CONSISTENCY IN IMPLEMENTATION, WITH DEVIATION FROM**

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**CORE PRACTICES ONLY TO THE EXTENT THAT IT IS NECESSARY TO ADDRESS SPECIFIC ISSUES THAT EXIST WITH THE JURISDICTION.**

**(4) IN THE CHIEF JUDGE ADMINISTRATIVE ORDER, THE CHIEF JUDGE OF THE JUDICIAL DISTRICT SHALL DESIGNATE A PERSON, AGENCY OR PROGRAM FOR EACH DETENTION FACILITY WITHIN THE JUDICIAL DISTRICT WHO SHALL CONDUCT THE PRETRIAL RELEASE SCREENING TO ALLOW FOR RELEASE OF PERSONS TAKEN INTO CUSTODY BY LAW ENFORCEMENT OFFICIALS. THE CHIEF JUDGE SHALL ALSO DESIGNATE A PERSON, AGENCY OR PROGRAM AS BONDING AND RELEASE COMMISSIONER AS DEFINED IN 16-4-109, C.R.S., THAT IS AUTHORIZED TO RELEASE PERSONS ASSESSED ELIGIBLE FOR RELEASE PURSUANT TO THE CRITERIA WITHOUT MONETARY CONDITIONS OF BOND. ALL RELEASES ON NON-MONETARY BONDS SHALL INCLUDE THE STANDARD AND STATUTORILY MANDATED BOND CONDITIONS PURSUANT TO 16-4-105, C.R.S., AND ANY OTHER APPROPRIATE AND NECESSARY NON-MONETARY CONDITIONS THAT WILL REASONABLY ASSURE COURT APPEARANCE AND SAFETY OF ANY PERSON OR THE COMMUNITY AS DETERMINED BY THE PRETRIAL SCREENING PROCESS AND THE WRITTEN RELEASE CRITERIA OF EACH JURISDICTION.**

16-4-109. Reduction or increase of monetary conditions of bond - change in type of bond or conditions of bond – **definition of bonding and release commissioner** ~~definitions~~

**(5) ~~(4)(b)~~ As used in 16-4-103(4), C.R.S., AND SUBSECTION (4) OF THIS SECTION 16-4-109, C.R.S., "BONDING AND RELEASE COMMISSIONER" this-subsection (4) means a person employed by a pretrial services program as described in section 16-4-106 (3), C.R.S., OR ANY OTHER PERSON OR PROGRAM and so designated as a bonding AND RELEASE commissioner by the chief or presiding judge of the judicial district TO CARRY OUT THE PROVISIONS OF THIS ARTICLE 4.**

### Discussion

A May 2015 *Issue Brief*<sup>2</sup> 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.<sup>3</sup>

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<sup>2</sup> 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](http://university.pretrial.org/viewdocument/issue-brief-pretrial-1))

<sup>3</sup> 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](http://nicic.gov/hidden-costs-pretrial-detention))

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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.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup>

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.<sup>7</sup>

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.

**Existing Statutory Language to be Deleted by Recommendation FY19-PR #06**

16-4-103. Setting and selection type of bond criteria

~~(1) At the first appearance of a person in custody before any court or any person designated by the court to set bond, the court or person shall determine the type of bond and conditions of release unless the person is subject to the provisions of section 16-4-101.~~

~~(2) If an indictment, information, or complaint has been filed and the type of bond and conditions of release have been fixed upon return of the indictment or filing of the information or complaint, the court shall review the propriety of the type of bond and conditions of release upon first appearance of a person in custody.~~

~~(3) (a) The type of bond and conditions of release shall be sufficient to reasonably ensure the appearance of the person as required and to protect the safety of any person or the community, taking into consideration the individual characteristics of each person in custody, including the person's financial condition.~~

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<sup>4</sup> See Footnote #2.

<sup>5</sup> 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](http://nicic.gov/investigating-impact-pretrial-detention-sentencing-outcomes))

<sup>6</sup> 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](http://scourts.gov/federal-probation-journal/2009/09/pretrial-risk-assessment-federal-court))

<sup>7</sup> 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](http://nicic.gov/exploring-impact-supervision-pretrial-outcomes))

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~~(b) In determining the type of bond and conditions of release, 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.~~

~~(4) When the type of bond and conditions of release are determined by the court, the court shall:~~

~~(a) Presume that all persons in custody are eligible for release on bond with the appropriate and least restrictive conditions consistent with provisions in paragraph (a) of subsection (3) of this section unless a person is otherwise ineligible for release pursuant to the provisions of section 16-4-101 and section 19 of article II of the Colorado constitution. A monetary condition of release must be reasonable, and any other condition of conduct not mandated by statute must be tailored to address a specific concern.~~

~~(b) To the extent a court uses a bond schedule, the court shall incorporate into the bond schedule conditions of release and factors that consider the individualized risk and circumstances of a person in custody and all other relevant criteria and not solely the level of offense; and~~

~~(c) Consider all methods of bond and conditions of release to avoid unnecessary pretrial incarceration and levels of community-based supervision as conditions of pretrial release.~~

~~(5) The court may also consider the following criteria as appropriate and relevant in making a determination of the type of bond and conditions of release:~~

~~(a) The employment status and history of the person in custody;~~

~~(b) The nature and extent of family relationships of the person in custody;~~

~~(c) Past and present residences of the person in custody;~~

~~(d) The character and reputation of the person in custody;~~

~~(e) Identity of persons who agree to assist the person in custody in attending court at the proper time;~~

~~(f) The likely sentence, considering the nature and the offense presently charged;~~

~~(g) The prior criminal record, if any, of the person in custody and any prior failures to appear for court;~~

~~(h) Any facts indicating the possibility of violations of the law if the person in custody is released without certain conditions of release;~~

~~(i) Any facts indicating that the defendant is likely to intimidate or harass possible witnesses; and~~

~~(j) Any other facts tending to indicate that the person in custody has strong ties to the community and is not likely to flee the jurisdiction.~~

~~(6) When a person is charged with an offense punishable by fine only, any monetary condition of release shall not exceed the amount of the maximum fine penalty.~~