

BAIL BLUE RIBBON COMMISSION



INITIAL RECOMMENDATIONS TO THE COLORADO SUPREME COURT

January 18, 2019

Justice Carlos A. Samour, Jr., Colorado Supreme Court, Chair
Mindy Masias, Chief of Staff, Colorado Judicial Department, Vice-Chair
Chief Judge Mark Thompson, 5th Judicial District
Chief Judge Pattie P. Swift, 12th Judicial District
Chief Judge Patrick Murphy, 17th Judicial District
Chief Judge James Hartmann, 19th Judicial District
Chief Judge Ingrid Bakke, 20th Judicial District
Glenn Tapia, Director of Probation Services, Colorado Judicial Branch
Jeremy Botkins, Senior Assistant Legal Counsel, Colorado Judicial Branch
Terry Scanlon, Legislative Liaison, Colorado Judicial Branch
Brad Kamby, Director of Arapahoe County Pretrial Services

BACKGROUND

Pretrial release is an important aspect of the criminal justice system. On March 5, 2018, former Chief Justice Nancy E. Rice formally appointed the Bail Blue Ribbon Commission (“the Commission”). The charge of the Commission is to review and evaluate pretrial release practices in Colorado and to propose recommendations for improvement to the Colorado Supreme Court. Over the course of many months and numerous meetings, the Commission has heard comments from a wide variety of stakeholders, including representatives from a district attorney’s office, the public defender’s office, a sheriffs’ organization, a county commissioners’ organization, pretrial services programs, victim advocacy groups, and the Colorado Commission on Criminal and Juvenile Justice (“CCJJ”). The Commission has also had discussions with leaders in states that have recently implemented bail reforms. Specifically, the Honorable Charles Daniels (former Chief Justice of the New Mexico Supreme Court) and the Honorable Stuart Rabner (Chief Justice of the New Jersey Supreme Court) spoke to the Commission.

At the outset, the Commission acknowledges the 2013 statutory amendments to this state’s pretrial release system. Among other things, these amendments:

- strongly encourage chief judges, counties, and cities and counties to develop pretrial services programs;
- direct judicial officers to utilize empirically developed risk assessment instruments when setting bail and considering bond conditions;
- instruct judicial officers to “[p]resume that all persons in custody are eligible for release on bond with the appropriate and least-restrictive conditions”; and
- afford defendants who are unable to meet the monetary conditions of their bonds after seven days the ability to file a motion for reconsideration of those monetary conditions.

Some of the state’s current pretrial release practices reflect these amendments. Nevertheless, the Commission believes that there is room for improvement. Although its work is not finished, the Commission has unanimously approved, and hereby respectfully submits, five initial recommendations to the Colorado Supreme Court. The Commission plans to continue its work and expects to make additional recommendations to the Court in the future.

INITIAL RECOMMENDATIONS

First Recommendation

Pretrial release services programs and judicial officers should be required to use an empirically developed and validated risk assessment instrument in making recommendations and decisions concerning pretrial release.

Risk assessment instruments are currently not being used in 37 of Colorado's 64 counties. Section 16-4-106(4)(c), C.R.S. (2018), requires pretrial release services programs to "make all reasonable efforts" to implement an empirically developed risk assessment instrument. Similarly, section 16-4-103(3)(b), C.R.S. (2018), requires judicial officers to use such an instrument "if practicable and available in the jurisdiction." The Commission believes that an empirically developed and validated risk assessment instrument should be available to all pretrial release services programs and judicial officers. Further, the Commission believes that all pretrial release services programs and judicial officers should be required to use such an instrument in making pretrial release recommendations or decisions. The use of reliable, evidence-based risk assessments should make the recommendations of pretrial release services programs more accurate and the related decisions of judicial officers more consistent, effective, and efficient. The Commission wishes to be clear, however, that any recommendations by pretrial release services programs arising from risk assessments should not be used in isolation by judicial officers. Nor should those recommendations be binding on judicial officers. When making pretrial release decisions, judicial officers must retain their discretion, which must include consideration of other relevant information like the statutory factors identified in section 16-4-103(5), C.R.S. (2018).

Second Recommendation

A pretrial release services program should be established in every county in Colorado and should operate based on uniform protocols.

Section 16-4-106(3), C.R.S. (2018), states that counties are “encouraged” to develop pretrial release services programs in consultation with the chief judge of the respective judicial district. However, CCJJ presented information to the Commission indicating that five years after the statute’s enactment, 40 of Colorado’s 64 counties do not have a pretrial release services program. This appears to be largely (if not entirely) due to lack of funding. The Commission believes that pretrial release services programs are necessary to effectively manage, through monitoring and supervision, most of the defendants who are eligible for release on bond. Additionally, pretrial release services programs provide judicial officers with more flexibility as they attempt to effectuate the statutory presumption that “all persons in custody are eligible for release on bond with the appropriate and least-restrictive conditions.” The Commission believes that the availability of pretrial release services programs will give judicial officers more pretrial release options to ensure community safety and defendants’ attendance at upcoming court dates. This, in turn, will reduce the number of individuals being held pretrial in the county jails and will yield significant savings which could be used to fund pretrial release services programs.

The Commission mentions the potential source of funding related to a reduction in the jail population because it realizes the importance of funding, especially regarding, though not limited to, pretrial release services programs. Appropriate funding is absolutely critical. Without appropriate funding, the Commission cannot envision this recommendation (and likely most of its other recommendations) ever being meaningful. Any hope of improving pretrial release practices in Colorado hinges on adequate funding.

To the extent that sufficient funding is available, pretrial release services programs should, at a minimum, include administering an empirically developed and validated risk assessment instrument to defendants, providing pre-advisement reports to the courts, and providing pretrial monitoring and/or supervision to defendants as ordered by the courts. Ideally, counties should be expected to develop and implement pretrial release services programs in consultation with the chief judge of each judicial district and in accordance with standards and guidelines developed and maintained by the State Court Administrator’s Office in the Judicial Branch. Any state funding should give due consideration to prioritizing the needs of the counties that currently do not have any pretrial release services.

Third Recommendation

The Judicial Branch should serve as an alternative operator of pretrial release services programs in limited circumstances.

Each county government should be given the ability to opt out of a statewide requirement to operate a pretrial release services program by requesting that the Judicial Branch provide such services in that county. The county commissioners should submit any opt-out request to the chief judge of the respective judicial district, and the chief judge should then forward the request to the State Court Administrator's Office in the Judicial Branch. Upon approval by the chief judge, the Chief Justice of the Colorado Supreme Court, and the State Court Administrator's Office, the Judicial Branch (whether through the Probation Department or a combination of the Probation Department and the State Court Administrator's Office) should be authorized to operate a pretrial release services program in the county. In that situation, the Judicial Branch would be authorized to use the appropriation designated for the county government opting out of the statewide requirement to operate a pretrial release services program.

Fourth Recommendation

The State Court Administrator's Office in the Judicial Branch should provide centralized support for the development, implementation, and operation of pretrial release services programs throughout the state.

The State Court Administrator's Office in the Judicial Branch, with sufficient appropriations, should be charged with supporting the development, implementation, and operation of pretrial release services programs throughout Colorado. Such support should include: (1) the development and maintenance of minimum standards governing the operation of pretrial release services programs; (2) the oversight and audit of pretrial release services programs that operate based on uniform protocols; (3) the review and approval of empirically developed and validated risk assessment instruments to be used by pretrial release services programs and judicial officers; (4) the provision of technical assistance to local stakeholders, including training, education, informational materials, and tools to track outcomes and fidelity to best practices; and (5) the collection, analysis, and report of centralized data to identify pretrial release services trends and outcomes throughout the state.

Fifth Recommendation

The State Court Administrator's Office in the Judicial Branch should operate a statewide program to remind defendants of upcoming court dates.

Provided there are sufficient appropriations, the State Court Administrator's Office in the Judicial Branch should be charged with implementing and operating a program to provide reminders (primarily through text messaging) to defendants in criminal cases of their scheduled court appearances. Notifications and reminders have been shown to reduce defendants' failures to appear ("FTAs"). And a decrease in the FTA rate will reduce the costs associated with FTAs, which include the costs of warrants, arrests, and delays, as well as collateral negative impacts on defendants and the criminal justice system. Counties that have already implemented their own reminder system should be given the ability to opt out of any future statewide reminder program.