

Colorado  
Commission  
on Criminal  
& Juvenile  
Justice

2020  
Annual  
Report



# CCJJ Annual Report | 2020

Report to the Governor, the Speaker of the House  
of Representatives, the President of the Senate,  
and the Chief Justice of the Colorado Supreme  
Court, pursuant to C.R.S. 16-11.3-103(2)(c)

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**COLORADO**  
Department of Public Safety



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# Acknowledgments

In Fiscal Year 2020, under the leadership of Chair Stan Hilkey and Vice Chair Abigail Tucker, the Commission continued its efforts to study and make recommendations to improve the state's justice system.

The Commission is grateful for its dedicated task force chairs: Stan Hilkey, Pretrial Release Task Force chair; Joe Thome and Jessica Jones, co-chairs of the Age of Delinquency Task Force, Megan Ring and Tom Raynes, co-chairs of the Drug Offense Task Force, and Chief Kilpatrick and Sheriff Lewis, co-chairs of the Opioid Investigation Subcommittee. In addition, the Commission thanks Joe Thome for serving as a Vice Chair to the Commission until the appointment of Dr. Abigail Tucker in September 2019.

The Commission could not complete its work without the dedication of task force and working group members who volunteer their time to work on topics the Commission has prioritized. The task force members attend at least monthly meetings and undertake homework assignments in between meetings, reflecting a strong dedication to improving the administration of justice in Colorado. These professionals invest considerable time to study and discuss improvements in current processes, and the Commission is grateful for their expertise and commitment to this work.

In particular, the Commission is appreciative for the work of Maureen Cain from the Office of the State Public Defender, Monica Rotner from the Boulder County Community Justice Services, Shawn Cohn from the Denver Juvenile Probation Department, Audrey Weiss from 1st Judicial District Attorney's Office, and Becca Curry and Rebecca Wallace from the American Civil Liberties Union of Colorado.

Additionally, the Commission's Legislative Committee was quite active during the 2020 legislative session, and the Commission acknowledges the efforts of Stan Hilkey, Abigail Tucker, Janet Drake, Shawn Day, Tom Raynes, Megan Ring, Maureen Cain, Joe Thome and Cooper Reveley.

The Commission thanks the leadership of the organizations of those who work on behalf of Commission initiatives.

Finally, the Commission is particularly grateful to its consultant, Richard Stroker. Mr. Stroker assists with planning and facilitating the meetings of the Commission and its study groups, and he has provided guidance, perspective, encouragement and clarity to the Commission during Fiscal Year 2020.





# Commission Members

## **Stan Hilkey**

*Chair*

Executive Director  
Department of Public Safety

## **Abigail Tucker**

*Vice Chair*

Clinical Director, Community Reach Centers  
Representing Mental Health Treatment Providers

## **Chris Bachmeyer**

District Court Judge, 1st Judicial District  
Representing the CO State Judicial Branch

## **Terri Carver** (appointed 06/2020)

State Representative, House District 20  
Representing the State Legislature (R)

## **Minna Castillo Cohen**

Director, Children, Youth & Families (CDHS)  
Designee for the Executive Director of the  
Department of Human Services

## **Shawn Day**

Aurora Municipal Judge  
Representing Municipalities

## **Janet Drake**

Deputy, Criminal Justice Section,  
Attorney General's Office  
Designee for the Attorney General

## **Valarie Finks**

Victims Representative, 18th Judicial District  
Representing Victim Rights Organizations

## **Bob Gardner** (appointed 07/2019)

State Senator, Senate District 12  
Representing the State Legislature (R)

## **Priscilla Gardner** (appointed 07/2019)

Supervising State Public Defender  
Representing Juvenile Justice

## **Julie Gonzales**

State Senator, Senate District 34  
Representing the State Legislature (D)

## **Serena Gonzales-Gutierrez**

State Representative, House District 4  
Representing the State Legislature (D)

## **Kristen Hilkey**

Chair, Colorado State Board of Parole  
Colorado State Board of Parole

## **Nancy Jackson**

Arapahoe County Commissioner  
Representing Counties/County Commissioners

## **Jessica Jones**

Private Defense Attorney  
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## **William Kilpatrick**

Chief, Golden Police Department  
Representing Chiefs of Police

## **Richard Kornfeld**

Recht/Kornfeld PC  
Representing Criminal Defense

## **Matt Lewis** (appointed 07/2019)

Sheriff, Mesa County  
Representing Chiefs of Police

## **Andrew Matson**

Colorado CURE  
Representing Offenders

## **Greg Mauro**

Director, Denver Division of Community Corrections  
At Large

## **Angie Paccione**

Executive Director  
Department of Higher Education



**Tom Raynes**

CDAC Executive Director  
Representing the Colorado District Attorneys'  
Council

**Cliff Riedel**

District Attorney, 8th Judicial District  
Representing District Attorneys

**Megan Ring**

State Public Defender  
Office of the Colorado State Public Defender

**Gretchen Russo**

Juvenile Parole Board Member  
Designee for the Chair of the Juvenile Parole Board

**Matt Soper (06/2019–06/2020)**

State Representative, House District 54  
Representing the State Legislature (R)

**Jennifer Stith**

Executive Director, WINGS Foundation  
Representing Victims/Survivors of Crime

**Glenn Tapia**

Director, Division of Probation Services  
Representing the Colorado State Judicial Branch

**Ann Tapp**

Executive Director, Safehouse Progressive  
Alliance for Nonviolence  
Representing Victim Rights Organizations

**Dean Williams**

Executive Director, Department of Corrections

**Joe Thome**

Director, Division of Criminal Justice,  
Department of Public Safety  
*Ex officio* Member



# Task Force and Committee Members

July 2019–June 2020

## Age of Delinquency Task Force

Name	Affiliation
Joe Thome, <i>Co-chair</i>	Division of Criminal Justice
Jessica Jones, <i>Co-chair</i>	Private Defense Attorney
Molli Barker	Juvenile Assessment Center, 18th Judicial District
David Bergman	Youthful Offender System, Department of Corrections
Audra Bishop	Department of Public Health and Environment
Jim Bullock	District Attorney's Office, 16th Judicial District
Maureen Cain	Office of the State Public Defender
Shawn Cohn	Denver Juvenile Probation
Kelly Friesen	Grand County Juvenile Justice Department & Senate Bill 94, 14th Judicial District
Bev Furano	Victim Advocate
Priscilla Gardner	Juvenile Unit, State Public Defender's Office
Serena Gonzales-Gutierrez	State Representative, House District 4
Arnold Hanuman	Colorado District Attorneys' Council
Anders Jacobson	Division of Youth Services, Department of Human Services
Angie Paccione	Department of Higher Education
Rich Persons	Youthful Offender System, Department of Corrections
Gretchen Russo	Colorado Department of Human Services
Tariq Sheikh	District Attorney's Office, 17th Judicial District

## Legislative Committee

Name	Affiliation
Stan Hilkey, <i>Chair</i>	Department of Public Safety
Janet Drake	Attorney General's Office
Shawn Day	Aurora Municipal Judge
Tom Raynes	Colorado District Attorneys' Council
Megan Ring	Office of the State Public Defender
Maureen Cain, <i>Ex officio</i>	Office of the State Public Defender
Joe Thome, Staff	Division of Criminal Justice
Cooper Reveley, Staff	Department of Public Safety



## Drug Offense Task Force

<b>Name</b>	<b>Affiliation</b>
Tom Raynes, <i>Co-chair</i>	Colorado District Attorney's Council
Megan Ring, <i>Co-chair</i>	Office of the State Public Defender
Chris Andrist	Colorado Bureau of Investigation
Maureen Cain	Office of the State Public Defender
Janet Drake	Attorney General's Office
Terri Hurst	Colorado Criminal Justice Reform Coalition
Andrew Matson	Colorado CURE
David Quirova	Office of the State Court Administrator
Jack Regenbogen	Colorado Center on Law and Policy
Joe Thome	Division of Criminal Justice
Glenn Tapia	Division of Probation Services
Abigail Tucker	Community Reach Mental Health Center
Audrey Weiss	District Attorney's Office, 1st Judicial District
Adam Zarrin	Office of the Governor

## Opioid Investigations Subcommittee

<b>Name</b>	<b>Affiliation</b>
Bill Kilpatrick, <i>Co-chair</i>	Police Department, Golden
Matt Lewis, <i>Co-chair</i>	Sheriff's Office, Mesa County
Maria Butler	Department of Public Health and Environment
Jason Dunn	U.S. Attorney's Office
Jose Esquibel	Colorado Consortium for Prescription Drug Abuse Prevention
Todd Fahlsing	West Metro Drug Task Force
Tom Gorman	Rocky Mountain High Intensity Drug Trafficking Area
Peter McNeilly	U.S. Attorney's Office
Lindsey Myers	Department of Public Health and Environment
Ray Padilla	Colorado Drug Investigators Association
Lisa Raville	Harm Reduction Action Center
Cathy Traugott	Department of Health Care Policy and Financing
Dan Volz	Colorado Bureau of Investigation
Scot Williams	Sheriff's Office, Boulder County





## Pretrial Release Task Force

<b>Name</b>	<b>Affiliation</b>
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Chris Bachmeyer	District Court Judge, 1st Judicial District
Maureen Cain	Office of the State Public Defender
Steve Chin	Colorado Association of Pretrial Services
Shawn Day	Aurora Municipal Court
Janet Drake	Attorney General's Office
Valarie Finks	Victim Representative, 18th Judicial District
Bill Kilpatrick	Golden Police Department
Rick Korneld	Private Defense Attorney
Greg Mauro	Denver Community Corrections
Lucienne Ohanian	Office of the State Public Defender
Tom Raynes	Colorado District Attorneys' Council
Clifford Riedel	District Attorney's Office, 8th Judicial District
Monica Rotner	Community Justice Services, Boulder County
Sean Smith	La Plata County Sheriff's Office
Ann Tapp	Safehouse Alliance for Nonviolence
Glenn Tapia	Division of Probation Services
Adam Zarrin	Office of the Governor
Bo Zeerip	District Attorney's Office, 21st Judicial District



# Commission Staff

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Division of Criminal Justice

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**Jack Reed**

Office of Research and Statistics  
Division of Criminal Justice

**Stephané Waisanen**

Office of Research and Statistics  
Division of Criminal Justice





# 1

## Introduction

This report documents the Commission’s thirteen year of work and accomplishments, describing the Commission’s activities between July 1, 2019 and June 30, 2020, Fiscal Year 2020. During this period, the Commission studied issues related to juvenile delinquency, pretrial release, and substance abuse. The Commission heard from a panel of presenters representing agencies involved in the development of four different community reinvestment legislative initiatives. Additionally, Commissioners received in-depth presentations on desistance from crime, prison population projections and factors affecting the accuracy of the projections, and the Community Law Enforcement Action Reporting (CLEAR Act). More detailed information can be found in the “Activities of the Commission” section.

*The Drug Offense Task Force and the Opioid Subcommittee were seated by the Commission in September 2019 in response to a mandate from the General Assembly pursuant to Senate Bill 2019-008 (Concerning the treatment of individuals with substance abuse disorders who come into contact with the criminal justice system). Per the*

legislative mandate, the Commission charged the Drug Offense Task Force to study and make recommendations concerning (1) alternatives to filing criminal charges against individuals with substance use disorders who were arrested for drug-related offenses, and (2) a process for automatically sealing criminal records for drug offense convictions. The Opioid Subcommittee, per S.B. 2019-008, was charged with studying and making recommendations concerning best practices for investigating unlawful opioid distribution in Colorado, including the creation of black market opioid investigatory entities at the State and local levels.

The Commission must provide a report by July 1, 2020 with its findings and recommendations to the Judiciary and the Public Health Care and Human Services Committees of the House of Representatives and the Judiciary and the Health and Human Services Committees of the Senate, or any successor committees. Due to COVID-19, it is anticipated that the final Commission will be delayed.

In September 2019, Mr. Hilkey announced the appointment, by the Governor, of Dr. Abigail Tucker as vice-chair of the Commission. Dr. Tucker is the clinical director of Community Reach Center, the mental health center located in Thornton. She oversees the justice accountability and recovery program and the jail therapy program, among other initiatives. She was an active member of the Jails/Mental Health Task Force, and is a member of the Drug Offense Task Force and its Diversion Working Group.

Governor Polis addressed Commissioners at the January 9, 2020 meeting during which he acknowledged the importance of the Commission's work and recognized that the work carries strong credibility and value. Major points from the Governor's address are summarized in Section 3.

Starting March 2020, the Commission meetings moved to a virtual platform due to the worldwide pandemic of COVID-19. At the April 10, 2020 meeting, Commissioners considered the circumstances created by the pandemic and decided to suspend Commission activities until June 2020. Mr. Hilkey called a special Commission meeting on May 27 to discuss Senate Bill 2020-161 (*Concerning Pretrial Release*) and FY20-PR#03 (*Implement Bail Bond Reform*).

In Fiscal Year 2020, the Commission approved three recommendations from the Pretrial Task Force and heard 6 preliminary recommendations in the areas of delinquency, drug offenses and opioid investigations. Legislative reforms are one type of systemic change the Commission promotes. It also recommends changes to operational policy, business practice, and agency philosophy. During the 2020 legislative session, aspects of the recommendations from the Pretrial Release Task Force were included in parts of Senate Bill 2020-161. The bill was approved by the Senate Judiciary Committee, but during the delayed and abbreviated 2020 legislative session due to COVID-19, the bill was postponed indefinitely by the Senate Appropriations Committee on June 10, 2020.

This Fiscal Year 2020 report is organized as follows: Section 2 provides a summary of the Commission's mission as reflected in its enabling legislation, along with its membership; Section 3 discusses Commission, task force and committee activities from July 2019 through June 2020; Section 4 details the Commission's recommendations and outcomes; and Section 5 describes the Commission's next steps.



# 2

## Legislative Intent and Membership

The Colorado Commission on Criminal and Juvenile Justice (“Commission”) was created in House Bill 2007-1358 with specific mandates. These initial mandates may be found in §16-11.3-101 through §16-11.3-105, C.R.S. and §24-1-128.6, C.R.S. The Commission was re-authorized during the 2018 legislative session by House Bill 2018–1287. More information on the Commission enabling legislation and statutory duties can be found on its website at [ccjj.colorado.gov/ccjj-creation](http://ccjj.colorado.gov/ccjj-creation)

The Commission comprises 29 voting members and one ex-officio (non-voting) member. Twenty members are appointed representatives of specific stakeholder groups, and ten are designated to serve based on their official position. Terms of the appointed members are for no more than two consecutive three-year terms, in addition to any partial term. The Commission includes state agency

representatives, legislators, the department of law, and multiple private and public stakeholders. As such, approved recommendations represent the views of the entire Commission and not that of any single agency or Commission partner.

During Fiscal Year 2020, the Commission welcomed four new members: Matt Lewis replaced Joe Pelle as the representative for the County Sheriffs of Colorado. Senator Bob Gardner replaced Senator John Cooke and Representative Terri Carver replaced Representative Matt Soper. Priscilla Gardner from the Office of the State Public Defender was appointed in July 2019 and replaced Cindy Cotten. Additionally, Abigail Tucker was appointed Vice Chair to the Commission.

By the end of Fiscal Year 2020, all positions at the Commission had been seated.







# 3

## Activities of the Commission

This section summarizes the activities and accomplishments of the Commission in Fiscal Year 2020. The topics covered in this section include the following:

- A summary of the educational presentations made to the Commission regarding local and national criminal justice initiatives and efforts,
- A description of a statutorily mandated training required for all Colorado's Boards and Commissions,
- A summary of the Governor's address to the Commission,
- A description of the planning process undertaken to define the work strategy for the Commission's priority issues areas through Fiscal Year 2020 and a biennial letter from the Governor,
- The Commission's work plan for Fiscal Year 2020 and a report on the work of the Commission's Task Forces and Subcommittees.

### Educational Presentations

The monthly Commission meetings provide a platform for ongoing education and information sharing regarding local and national criminal justice issues and trends. During Fiscal Year 2020, experts were brought in to present four topics discussed below.

#### Policy Matters/Prison Population Projection

During the 2020 Fiscal Year, Commissioners received an in-depth presentation from Linda Harrison, senior analyst for the Division of Criminal Justice's Office of Research and Statistics, on the methods used to produce the biannual prison population projections and factors affecting the accuracy of such projections. The following is a summary of the presentation:

- Pursuant C.R.S. 24-33.5-503, the duties of the Division of Criminal Justice (DCJ) include collecting and disseminating information concerning crime and criminal justice and

providing information to legislative council concerning population projections, research data, and other information relating to the projected long-range needs of correctional facilities and juvenile detention facilities.

- DCJ prepares two forecasts per year. The first, generated each winter, uses data provided by the Department of Corrections. The second is prepared each summer, and adjusts the prior forecast based on recent patterns of admissions and discharges, policy changes, and new legislation that passed in the prior legislative session.
- Overview of the forecast methodology.
- The drivers of DCJ December 2018 forecast included:
  - Criminal court filings increased (+43%) over the prior 5 years,
  - Filings increased 12.5% each year between FY2016 and FY2017
  - New sentences to prison increased 11.9% in FY2017 and 9.7% in FY2018, the largest degrees of growth observed in over a decade.
  - Growth in the proportion of probation sentences ending in revocation...
  - ...With an increasing proportion of those revoked sentenced to prison.
  - Strong growth is expected in the Colorado population, especially among those in the 24- to 44- year old age range.
- The DCJ June 2019 forecast rationale:
  - HB 19-1263 reclassified several existing drug felonies as misdemeanors.
  - SB 19-143 will result in increases in parole releases and far fewer parole revocations.
  - Prison admissions for technical parole violations have declined.

- Revocations during the most recent three months (March–May 2019) fell by 31.7% over the number observed during the same time frame in the previous year.
- Growth in new court commitments has slowed.
- Overall releases increased slightly in FY 2019.
- In particular, discretionary parole releases increased.
- Growth is expected to return by the end of FY 2022, though at a slower rate than previously projected.

### **Community Reinvestment: Four Initiatives in Colorado**

During Fiscal Year 2020, Commissioners heard from a panel of presenters on community reinvestment initiatives in Colorado. The panel consisted of Terri Hurst and Juston Cooper from the Colorado Criminal Justice Reform Coalition, Hassan Latif from the Second Chance Center, and Richard Morales from the Latino Coalition for Community Leadership.

Terri Hurst explained that CCJRC has collaborated in the development of four different community reinvestment legislative initiatives. The highlights of the presentation follow:

- The Re-Entry-Work and Gain Education and Employment Services (WAGEES) Program began in 2014 with four pilot programs in partnership with the Department of Corrections (DOC). Today there are 18 programs statewide with the mission to provide services to people on parole, on transition in Community Corrections, or who have discharged their prison sentence. The latter group can access services for one year following discharge. This is a voluntary program.
- The Transforming Safety Initiative began in 2017. Two pilot sites, in north Aurora and southeast Colorado Springs, provide grants for direct services and also micro-loans for small

businesses. Twenty-six community organizations are funded by the program, providing a variety of services to justice-involved people, crime survivors, and K-12 students.

- The Crime Survivors Services grant project began in 2018. This initiative is housed in the Colorado Department of Public Health and Environment (CDPHE) and focuses on underserved victims, particularly men, people of color, and young adults. As an example of some of this work, a grant was awarded to Denver Health to research best practices regarding the responses to repeat victimization and to convene men from the community to discuss victimization issues.
- The rollout of the Harm Reduction program has just begun (2019).
- The Latino Coalition for Community Leadership (LCCL) serves as a “community-facing grant intermediary” for these initiatives. The LCCL is the grant manager for both the WAGEES reentry program in partnership with DOC and the Victims Services grant program in partnership with CDPHE. For the Transforming Safety initiative, LCCL provides technical assistance to grantees along with data collection and evaluation.

#### **Desistance from Crime—Empirical Evidence—Implications for Policy and Practice**

Roger Pzybylski, from the RKC Group and Justice Research and Statistics Association, presented on desistance from crime. The highlights of the presentation follow:

- Desistance is the process of abstaining from crime among those who previously had engaged in a sustained pattern of offending.
- Desistance requires motivation, acquisition of new skills, and relationships that facilitate and help maintain change.
- Desistance is related to both external/social aspects of a person’s life as well as internal/psychological factors. Age and maturity, employment, family and relationships, and

sobriety are very important factors that help a person desist from crime.

- Positive relationships between offenders and justice system professionals matters; every interaction is an opportunity to support desistance.
- Time in treatment and aftercare treatment is important for long term results.
- From the National Research Council’s report on *Parole, Desistance from Crime, and Community Integration*:
  - Work, family ties, and reduced consumption of drugs are important factors in desistance.
  - The time period immediately following the release from prison is the riskiest.
  - Supervision alone does not reduce recidivism; supervision integrated with treatment does.
  - Sanctions alone have little impact on desistance behavior.
- What we can do?
  - Give strong optimistic messages and avoid labelling; focus on strengths not just risks.
  - Make practical assistance the priority.
  - Work with parents and partners.
  - Recognize and mark achievement towards desistance.
  - Work with and support communities.
  - Work with, not on, the individual.
- Policy Implications
  - The evidence highlights the need to alter current policies on lengthy (or any) incarceration and the collateral consequences for a felony conviction.
  - Incarcerating high percentages of individuals damages already weak bonds to society. Imprisonment harms family, school and job stability.

- Individuals should be enabled to continue their education while in prison and also participate in meaningful occupational and vocational programs that could improve post-release job stability.
- Programs should effectively monitor compliance and incorporate treatment focusing on job training and employment, education, family counseling, and reconnecting individuals to the community.
- Invest in communities, as was discussed in the first presentation.
- Invest in crime prevention.

Mr. Przybylski concluded by recommending a documentary film on the topic of crime desistance, *The Road from Crime* (running time, 48:35), available at, [iriss.org.uk/resources/videos/road-crime](http://iriss.org.uk/resources/videos/road-crime).

### **Community Law Enforcement Action Reporting (CLEAR Act)**

During Fiscal Year 2020, Commissioners received a presentation on the Community Law Enforcement Action Reporting Act, also referred to as the CLEAR Act, by DCJ's research director Kim English. The CLEAR Act was the result of Senate Bill 2015-185 that mandated the Division of Criminal Justice to annually analyze and report the distribution of race/ethnicity and gender at multiple decision points in the justice system process (arrest, filing, disposition, sentencing and revocation).

Ms. English began her presentation by explaining that she would summarize some of the most important findings that surfaced in the CLEAR Act analyses. Ms. English handed out a document titled "Procedural Fairness/Procedural Justice—A Bench Card for Trial Judges."

The full content of the presentation along with the document can be found on Commission website under the October 11, 2019 meeting tab at, <https://ccjj.colorado.gov/ccjj-mtgs2019>.

The highlights of the 2019 analysis are provided below.

- The CLEAR Act calls for the analysis of race/ethnicity and gender at the major decision points in the system, including arrests, court filings, case outcome and initial sentencing, revocation and parole.
- In 2018, statewide: Black represented 4% of the adult state population and accounted for 12% of arrests and 11% of adult district court filings. Hispanic adults represented 28% of the population and accounted for 28% of arrests and 30% of adult district court filings.
- In 2018, Blacks were more likely to be arrested, were less likely to get deferred judgements and more likely to receive a sentence to confinement compared to Whites.
- Regarding sentencing, many factors can influence a sentencing decision such as prior cases, prior convictions for specific violent crimes, concurrent cases, felony level, instant (current) offense type (drug, property, other, violent) and whether the instant offense was a specific violent crime. Statistically controlling for these factors, the analysis revealed significant disparities at sentencing for Blacks and Hispanics.

Ms. English cited recommendations from the Brennan Center for Justice and the Task Force on 21st Century Policing aimed at addressing issues of disproportionate minority contact and the reduction of racial and ethnic disparities across many parts of the criminal justice system. Ms. English mentioned that, in addition to the statewide report, full reports for the 22 judicial districts along with a data dashboard are available on the Division of Criminal Justice's Office of Research and Statistics website, available at [ors.colorado.gov/ors-reports](http://ors.colorado.gov/ors-reports).

## Statutorily mandated training for all Colorado's Boards and Commissions (House Bill 2018-1198)

- Ingrid Barrier from the Attorney General's Office explained to the Commission that legislation was passed in 2018, H.B. 1198, calling for an annual training on best practices for all of Colorado's boards and commissions. Ms. Barrier provided a training on topics ranging from statutory mandates and staff duties to decision-making processes, the open meetings requirements under the Sunshine Law, and the Colorado Open Records Act.
- Consistent with H.B. 2018-1198, Commissioners attended New Member Orientation provided by Commission staff. Members were briefed on the Commission background, mandates, by-laws, and processes.

## Summary of the Governor's address to the Commission

On January 10, 2020, Commissioners welcomed Governor Jared Polis. His visit coincided with the Commission's vote on the Pretrial Release Task Force recommendations, and Governor Polis expressed support for pretrial reforms as he stated during the State of State Address on January 9.

Governor Polis began his comments by acknowledging the importance of the Commission's work, recognizing that the products of the Commission carry strong credibility and value thanks to the involvement of many stakeholders in Commission efforts.

Major points from the Governor's address are summarized below:

- Criminal justice reform has two main goals, to achieve justice for victims and their families, and to increase public safety by detaining dangerous individuals and by reducing crime and recidivism.
- There should be a rational sentencing approach, ensuring proportionality and reducing disparities. This will strengthen public confidence in the criminal justice system and ultimately reduce the fiscal impact of incarceration.
- The juvenile detention system is looking at ways to integrate more programs that provide pro-social behavior changes and personal skills development to increase the successful pathway to re-entry in the community.
- Several efforts are ongoing in the juvenile justice arena, including the expansion of diversion services aimed at reducing juvenile justice involvement in the criminal justice system. There are significant concerns with and attention on the intersection of delinquency, neglect, dysfunctional environments and involvement in the juvenile justice system. There is also ongoing work in the juvenile detention facilities to ensure that juveniles are provided with safe and secure home-like environment.
- It is important to maximize the use of diversion and pretrial interventions in the adult criminal justice system. The decision to detain pretrial should be based on factors such as public safety, justice, fairness to victims, and reducing recidivism and not whether the offender has the means to post bond.
- Many criminal justice reforms passed last year with bipartisan support, including the following: Elimination of cash bail for petty and municipal offenses; the ability for defendants to post bond under certain circumstances within two hours and be released within 4 hours of posting bond; "ban the box" efforts that address collateral consequences; juvenile justice reforms; and the change from felony to misdemeanor for possession of controlled substance combined with a focus on treatment for addiction.
- The pretrial recommendation under discussion today addresses the front end of the system and will bring more equity and rationalization to the process. There are individuals detained in jails

for minor crimes who do not have the money to post bond and the current monetary bail system criminalizes poverty/financial insecurity and distracts from more fair and effective considerations of risk factors.

Governor Polis encouraged Commissioners to vote in favor of and to continue to support the pretrial recommendation in its entirety. He thanked the Legislative members of the Commission and the Attorney General for their leadership in shepherding and fostering criminal justice reforms. He encouraged these individuals to maintain the complete package of reforms included in the recommendation.

Governor Polis mentioned that he will soon be working in consultation with the Chief Justice and Legislative leadership to submit the biennial letter to the Commission outlining possible areas of work. He thanked Commissioners for their work on the overarching goals of making the criminal justice system more rational, keeping people safer and honoring the rights of victims.

## Commission: Future Work

### Commissioner feedback and areas of interest

At the November 8, 2019 Commission meeting, Stan Hilkey explained that the Commission typically holds an annual retreat to discuss operational practices, review the Commissions' goals and the status of those goals, and identify areas of study for the year ahead. However, this discussion was postponed in Fiscal Year 2019 due to legislative mandates directing specific areas of study. As the current task forces complete the mandated assignments in early spring 2020, and as information from the Fiscal Year 2020 legislative session becomes available, the Commission may be in a position to address new topics. Therefore, Commissioners divided into small groups to discuss ideas for future work. Upon the conclusion of this exercise, Commissioners identified six potential study topics:

- 1) Uniform system to share criminal justice information;
- 2) Strategic criminal justice decision-making;
- 3) Evaluating victim services and identification of best practices;
- 4) Over-representation of minorities in the criminal justice system;
- 5) Revisiting the sentencing grid; and
- 6) Diversion/pre-arrest.

However, the group agreed to wait to pursue these topics until the current task forces completed their work.

### Governor Jared Polis' 2020 biennial letter to the Commission regarding study topics, pursuant to §16-11.3-103(7), C.R.S.

Governor Jared Polis addressed a biennial letter to Chair Hilkey dated June 24, 2020. This letter asked the Commission to address several topics including sentencing reform. The letter can be found on the Commission website at [ccjj.colorado.gov/ccjj-mtgs2020](http://ccjj.colorado.gov/ccjj-mtgs2020) under the July 10, 2020 meeting. The Commission's response to the Governor's letter occurred outside the time boundaries of this report, and so will be described in the Fiscal Year 2021 Commission report.

## Commission Work Plan for Fiscal Year 2020: Task Forces and Subcommittees <sup>1</sup>

The Commission's work during Fiscal Year 2020 was undertaken by the following five groups (see Figure 3.1).

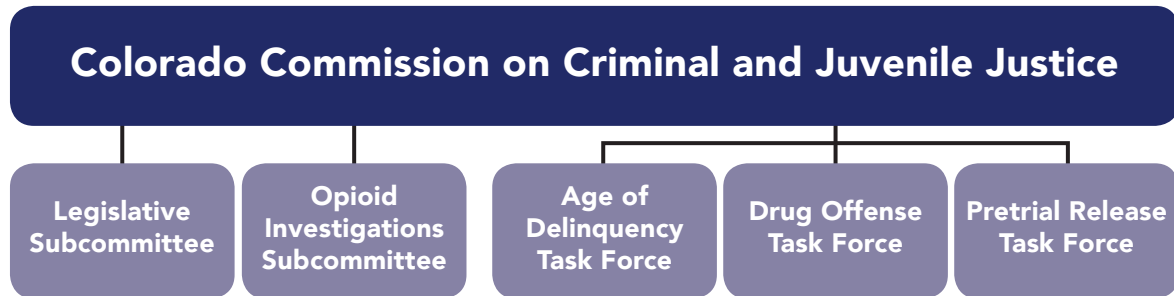
- Legislative Committee, chair Stan Hilkey
- Opioid Investigations Subcommittee, co-chairs Williams Kilpatrick and Matt Lewis

<sup>1</sup> Task forces are long term working groups with multiple objectives; subcommittees are typically short term (usually meeting for less than one year) with focused objectives.



- Age of Delinquency Task Force, co-chairs Jessica Jones and Joe Thome
- Drug Offense Task Force, co-chairs Megan Ring and Tom Raynes
- Pretrial Release Task Force, chair Stan Hilkey

Figure 3.1 Commission and Subcommittees/Task Forces



**Legislative Subcommittee**

This ongoing Subcommittee meets primarily during the legislative session to ensure that bills based on Commission recommendations continue to reflect the intent of the Commission when amendments and modifications occur. Members review legislation and legislative changes as bills progress through the General Assembly.

April 10, 2020, the Commission voted to suspend its work until June. The following recommendations were presented to the Commission on June 12, and the outcomes of the recommendations will be reported in the Fiscal Year 2021 Commission report.

**FY20-OP#01.** Establish a statewide entity to coordinate strategy regarding dangerous drugs [Statutory]

**Opioid Investigations Subcommittee**

This Subcommittee was seated by the Commission in September 2019 in response to specific mandates<sup>2</sup> by the Colorado General Assembly pursuant to Senate Bill 2019-008 (*Concerning the treatment of individuals with substance abuse disorders who come into contact with the criminal justice system*). The Commission must provide a report by July 1, 2020 with its findings and recommendations to the General Assembly.

Establishes a narcotics enforcement entity, the Dangerous Drugs Coordination Council (“the Council”), that facilitates and coordinates the sharing of information among law enforcement agencies across the state. The Council, to be housed in the Colorado Department of Public Safety, will provide a structure for collaboration, information sharing, and efforts to support local law enforcement agencies.

The Subcommittee developed three recommendations for presentation at the Commission meeting on April 10, 2020. However, due to the concerns related to the pandemic, on

The Council requires one full time employee to coordinate the meetings and meet the analytical needs of the entity. The position will be housed in the Colorado Department of Public Safety where it can benefit from the work of the Colorado Information Analysis Center (CIAC).

<sup>2</sup> The remaining mandates in S.B. 2019-008 were assigned to the Drug Offense Task Force.

The Council shall include at a minimum the following representatives: One police chief from a rural district; one police chief from an urban district; one sheriff from a rural district; one sheriff from an urban district. In addition, the Council will include representatives from the Colorado District Attorneys’ Council, the Attorney General’s Office, the Colorado Coroners Association, the Colorado Drug Investigators Association, the Department of Health Care Policy and Financing, the Department of Public Health and Environment; the Department of Public Safety, the Colorado Bureau of Investigation, and the Colorado Information Analysis Center.

The Council will undertake the following:

- Coordinate strategic responses to emerging illicit drug trends, regardless of the drug type involved;
- Orchestrate the implementation of an emergency medical service tracking and reporting system, the Overdose Detection Mapping Application Program (ODMAP);
- To facilitate coordination and collaboration, invite important Federal partners and stakeholders that include, but are not limited to, the following agencies: the U.S. Attorney’s Office; U.S. Homeland Security Investigations; U.S. Postal Inspection Service; U.S. Drug Enforcement Administration; Rocky Mountain High Intensity Drug Trafficking Area; Federal Bureau of Investigation; and the Bureau of Alcohol, Tobacco, Firearms and Explosives.

**FY20-OP #02.** Establish a statewide Dangerous Drugs Investigation and Enforcement Team [Statutory; Budgetary]

Establish a statewide Dangerous Drugs Investigation and Enforcement Team within the Colorado Bureau of Investigation (CBI) to assist and support law enforcement around the state to identify and investigate unlawful opioids and other dangerous drugs. Rural and frontier areas will be the priority for this team.

In order to meet the expected investigative demands, the vast geographic area to be served and special considerations relating to officer safety, the Dangerous Drugs Enforcement Team will comprise 16 total staff members divided into two teams: one assigned to the western and one to the eastern slope. It is estimated that the total costs will range between \$2.6M to \$3.0M over the first 3 years of operation. These 16 team members will consist of the following:

- 10 Agents (Criminal Investigator II; 5 Grand Junction/Durango and 5 Douglas Co./Pueblo)
- 2 Agents in Charge (Criminal Investigator III; One supervisor assigned to each slope)
- 2 Intelligence Analysts (One assigned to each slope)
- 2 Administrative Assistants III (One assigned to each slope)

**FY20-OP03.** Implement unified drug overdose reporting and tracking [Statutory]

Implement and require participation by public safety and public health personnel in the Overdose Detection Mapping Application Program (ODMAP) in Colorado. The Washington/Baltimore High Intensity Drug Trafficking Area’s ODMAP is an emergency medical service tracking and reporting system. To facilitate expeditious public health and law enforcement responses to save lives in Colorado, the following entities should be required to implement and participate in this program:

- The statewide ODMAP implementation will require coordination and leadership. The Dangerous Drugs Coordination Council (created in Recommendation FY20-OP #01) will be responsible for directing the implementation of ODMAP, including outreach to rural agencies, and facilitating statewide participation.
- Emergency Medical Services (EMS), Coroners, Law Enforcement & Emergency Departments (ERs).



### Age of Delinquency Task Force

The Age of Delinquency Task Force was seated in February 2018 to address the following topics: appropriateness of juvenile placements and treatment based on considerations of brain development, chronological age, maturity, trauma history and potential traumatic impacts; review the appropriateness of assessments currently in use; and Youthful Offender System outcomes following recent eligibility changes. Subsequently, the Commission assigned specific study areas to the Age of Delinquency Task Force, pursuant to the mandates in House Bill 2019-1149.

The bill mandates that the Commission undertake the following activities: a) compile data regarding all criminal filings in the state from the last three years that data is available in which a defendant is at least 18 or up to 25 years of age; b) study the established brain research for emerging adults and the data collected, c) study the potential impacts on the Division of Youth Services and the Youthful Offender System if they also served emerging adults, and d) make recommendations to the General Assembly regarding appropriate uses of the juvenile justice system for emerging adults. The Commission must prepare a report of the collected data and recommendations by June 30, 2020.

During Fiscal Year 2020, the Task Force completed work in the area of intervention options, treatment services, and placement alternatives for 10–12 year olds, and focused on exploring options and approaches regarding the management of “transitional” populations (18–24 year olds) in the criminal justice system pursuant to mandates in House Bill 2019-1149.

The Task Force established two Working Groups:

- *The Youthful Offender System Working Group* was tasked to study YOS eligibility, capacity and regulations. The YOS Working Group toured the Youthful Offender System in December 2019 and drew the following conclusions:
  - The existing YOS program does not appear equipped to effectively accommodate an immediate expansion of eligibility (for those up to 24 year olds).

- New statutory criteria and policy changes will allow flexibility in programming choices for young adults.
- Current criteria in statute defining the required time periods spent in YOS program phases may not effectively serve individual needs.
- The current YOS program was designed to adhere to statutory mandates, which are now dated and impede programmatic flexibility and the use of best practices.
- Statutory changes can create the necessary flexibility in the YOS program.
- There is a need to improve and mandate information sharing between YOS and other agencies for more effective and efficient service provision.
- There is a need to expand the use of restorative justice.
- There is a need to initiate an independent evaluation to focus on the relevance of and gaps in existing YOS programs.
- Re-entry/program violations/revocation/re-sentencing procedures may require statutory modifications.
- *The Community Supervision Working Group* sought to identify opportunities to expand diversion options, improve community supervision practices, and review specialty court and community corrections options for the 18–24 age group. The Community Supervision Working Group surveyed and held several meetings with chief probation officers on policy standards regarding the following:
  - Revising case planning and engagement strategies,
  - Improving preparation of those who work with this population through training on supervision methods and risk/needs assessment tools,
  - Improving family member engagement, and
  - Disseminating brain development research.

The work of both working groups resulted in two recommendations that were to be preliminarily presented at the Commission’s meeting on April 10, 2020. However, due to circumstances surrounding the pandemic, on April 10, 2020, the Commission voted to suspend its work until June. A consequence to this suspension was a delay in completing the review by the Commission of the Task Force recommendations and providing the mandated information to Judiciary Committees by June 30, 2020, as required in House Bill 2019-1149. The following recommendations were presented to the Commission on June 12, 2020 and the outcomes of the recommendations will be reported in the Fiscal Year 2021 Commission report.

**FY20-AD01.** Incorporate Standards to Formally Recognize and Address the Needs of Young Adults in Probation Supervision [Policy]

Adult probation supervision standards promulgated by the Judicial Department should be modified and expanded by July 1, 2021 to create specific standards associated with probation supervision of young adults (18–24 year olds). These supervision standards should reflect current research and knowledge about age and brain development, especially regarding matters such as impulsivity, risk taking, and appreciating consequences of actions taken. Further, these standards should be guided by evidence-based or emerging best practices regarding the supervision of young adults, including case management approaches, involvement of the family in supervision efforts, responses to violations, the use of appropriate assessment tools, the use of restorative justice principles and practices, and partnerships with providers and the community to meet the needs of this population.

The implementation of this policy update should include the following :

- Training regarding brain development,
- Targeted interventions based on brain science,
- The need for development of partnerships with service providers and other community stakeholders to meet the needs of this population,
- Restorative justice,

- Assessment and case planning; case planning that incorporates educational/vocational training and life skills.
- Technical assistance should be provided to probation departments to facilitate the implementation of best practices.

**FY20-AD02.** Revise Youthful Offender System statutes [Statutory]

Expand the operational flexibility of the Youthful Offender System (YOS) program in the Department of Corrections; clarify the time credits that are awarded in YOS cases when a revocation occurs; address issues regarding payment of certain fees in YOS cases; and modify training requirements for DOC staff who work with inmates that are placed in YOS facilities.

Specifically, modify the following provisions in statute:

- Delete in 18-1.3-407 (2)(a)(IV)(a.5) the prescriptive programming language;
- Amend “may” to “shall” in 18-1.3-407 (2)(a)(IV) (b) regarding time credit;
- Amend 18-1.3-407 (3.3)(c)(I) regarding placement in YOS Phase II;
- Add “OR DESIGNEE” in 18-1.3-407 (3.5) regarding staff transfers to reflect current practice;
- Amend 18-1.3-407 (3.5) to allow flexibility regarding staff training requirements;
- Delete 18-1.3-407 (11) regarding district attorney data collection; and
- Amend 18-1.3-407 (11.5)(a)(I) and (c) to clarify court cost payments.

**Drug Offense Task Force**

The Drug Offense Task Force was seated by the Commission in September 2019 to address specific mandates in Senate Bill 19-008<sup>3</sup> (*Concerning the treatment of individuals with substance abuse disorders who come into contact with the criminal justice system*). The Task Force established the Diversion Working Group and the Sealing Working Group to address these mandates.

<sup>3</sup> The remaining mandates in S.B. 19-008 were assigned to the Opioid Investigations Subcommittee.

- *The Diversion Working Group* was established to study and develop recommendations concerning alternatives to filing criminal charges against individuals with substance use disorders who have been arrested for drug-related offenses. The Working Group established three Study Groups on these diversion topics: The Eligibility Criteria Study Group, the Service Delivery and Screening Tools Study Group, and the Process and Referral Authority Study Group.
- *The Sealing Working Group* was established to study and develop recommendations concerning a process for automatically sealing criminal records for drug offense convictions.

The Drug Offense Task Force developed one budgetary and one policy recommendations that were to be preliminarily presented at the Commission’s meeting on April 10, 2020. However, due to the pandemic, on April 10, 2020, the Commission voted to suspend its work until June. A consequence to this suspension was a delay in completing the review by the Commission of the Subcommittee recommendations and providing the information to the Judiciary Committees of the House and Senate on June 30, 2020. The following recommendations were presented to the Commission on June 12 and the outcomes of the recommendations will be reported in the Fiscal Year 2021 Commission report.

**FY20-DR01.** Create and implement a process for automatically sealing criminal conviction records for drug offenses [Statutory, Budgetary]

Create, implement, and fund a process that will permit the automatic sealing of criminal conviction records for drug offenses. The State Court Administrator’s Office (SCAO), the Colorado Bureau of Investigations (CBI), and each district attorney’s office will implement procedures to evaluate cases that qualify for automatic sealing and will automatically seal eligible cases without associated fees, a Motion or a Petition to Seal being filed by the defendant.

**FY20-DR02.** Support a public health model of deflection [Policy]

Fund public health interventions that strengthen community resources and expand alternatives to filing criminal charges against adults and youth

with substance use issues who are at risk of justice involvement. By aspiring to a public health approach—which redirects adults and youth with substance abuse issues engaging in behaviors that can lead to incurring criminal charges from the justice system entirely—this recommendation shifts priorities in funding upstream, supporting the still inadequate system for care coordination and treatment. Recognizing that funding diversion programs that are post-arrest continues to inadvertently reinforce the justice system as the point of intervention for many adults and youth with substance use disorder treatment needs, notwithstanding potential for co-occurring mental health needs, true alternatives are still needed to avoid the justice system operating as a healthcare system of intervention and care.

To facilitate this approach, implement the following:

- Priority #1: Provide funding and improve access to coordinated treatment provider and care coordination systems so that adults, youth and families can access services, interventions, supports, and treatment modalities within their community, leading to a decrease in call volume for first responders and reliance on the justice system as a point of intervention and to improved community wellness.
- Priority #2: Continue to improve training and to enhance service provider collaboration with law enforcement including but not limited to expanding co-responder and law enforcement diversion programs and deflection models that also include the critical component of care coordination, treatment when and where necessary and community engagement. Without community supported and appropriately funded alternative case management and treatment options, first responders will continue to be left without options that match the complexity of needed care.
- Priority #3: Continue to increase post-arrest diversion opportunities to create multiple “off-ramps” from criminal and juvenile justice system entanglement and prioritize programs using a harm-reduction approach to address the underlying needs of individuals, the community, and victims.

## Pretrial Release Task Force

The Pretrial Release Task Force was seated by the Commission in June 2017 and was charged with assessing the implementation efforts associated with the 2013 bail reform legislation that originated from Commission recommendations. The Task Force identified the following three areas of focus: a) use of pretrial services and risk assessment tools on a statewide basis, b) development of a pretrial detention model that could reduce the reliance on cash bonds, and c) examination of opportunities to improve implementation of 2013 statutory changes.

The Task Force produced three recommendations during Fiscal Year 2020. These are described below.

### **FY20-PR01.** Implement pretrial measurement and data requirements [Policy]

Local pretrial service programs, State Court Administrator's Office and other data repository entities shall gather and submit specific, case- and/or person-level data elements to the Division of Criminal Justice (DCJ) annually. These data must include distinct performance and outcome measures (the detailed data elements may be found in the FY20-PR#01: ADDENDUM). The Division of Criminal Justice in consultation with a statutorily created statewide pretrial services data advisory group (see Commission Recommendation FY20-PR#02) will establish the required data elements [Note: The required 1.0 FTE and the one-time appropriation for information technology requirements related to these functions are found in Recommendation FY20-PR#02.].

This recommendation was approved by the Commission on November 8, 2019, is dependent on statutory changes proposed in FY20-PR #02 and is related to Recommendation FY20-PR #02.

### **FY20-PR02.** Create a statewide Pretrial Services Data Advisory Group [Statutory; Budgetary]

In §16-4-106, C.R.S. create a statewide pretrial services data advisory group staffed by the Division of Criminal Justice with a sunset of five years from legislation enactment. The data advisory group must include representation of pretrial stakeholders, including the State Court

Administrator's Office. The Division of Criminal Justice is the central repository for all pretrial services data (see Commission Recommendation FY20-PR#01). One (1.0) FTE is required for staffing the statewide pretrial services data advisory group and for pretrial services data management, analysis, and annual reporting and an additional one-time appropriation will be necessary to meet the information technology requirements.

This recommendation requires statutory change. This recommendation was approved by the Commission on November 8, 2019 and was first available for action during the FY 2020 legislative session. This recommendation is interdependent with Recommendation FY20-PR #01 and related to Recommendation FY20-PR #03. 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.

### **FY20-PR03.** Implement bail bond reform [Statutory]

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 the following:

- 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 can be found in the “Recommendation Text” in Section 4.

This recommendation requires statutory change. This recommendation was approved by the Commission on January 10, 2020 and was first available for action during the

FY 2020 legislative session. This recommendation is related to Recommendations FY20-PR #01 and FY20-PR #02. 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.

Following the approval of the recommendations by the Commission, the Pretrial Release Task Force was placed on hiatus pending the outcome of Senate Bill 2020-161 at the FY 2020 Legislative session.

### **New directions**

The Commission received in June 2020 the biennial letter from the Governor directing the Commission to make recommendations on the following topics:

1. Analyzing prison population trends, and continually reviewing the implications of any changes in sentencing on the length of those incarcerated in the Department of Corrections (DOC). The Commission should recognize the

finite resource of available beds in DOC, as well as the administration’s effort to eliminate private prison capacity.

2. Developing a guideline approach to structuring dispositions.
3. Defining the purpose of probation, so that the terms and consequences of violations support best practices.
4. Ensuring statewide consistency in the application of sentencing guidelines that mitigate the effects of individual discretion by system actors.
5. Determining the appropriate degree of determinacy and where to strike a balance between “truth in sentencing” and ensuring that there are incentives for success throughout an offender’s sentence. This includes reviewing:
  - a. The necessity of the extraordinary risk section in C.R.S. 18-1.3-401(10), to simplify the sentencing code while at the same time providing the prosecution with more discretion in charging and negotiations.
  - b. Habitual criminal provisions of C.R.S. 18-1.3-801 so that we are enhancing sentences for only those individuals who are truly public safety risks.
6. Optimizing how community resources are allocated to better align interventions that are more likely to reduce recidivism and provide meaningful sentencing choices.
7. Improving the interactions between those with behavioral health conditions (including individuals with intellectual and developmental disabilities, traumatic brain injuries, and dementia) and first responders, law enforcement, and healthcare workers, so that those with behavioral health conditions are not unnecessarily involved in the justice system due to unmet health needs.

As this report goes to press, the Sentencing Reform Task Force was seated in September 2020 to address the Governor’s letter.

## Summary

This section reviewed the work of the Commission and its Task Forces from July 2019 through June 2020. During that time, the Commission continued the work of previously established task forces (Age of Delinquency and Pretrial Release) and created two new areas of work, undertaken by the Drug Offense Task Force and the Opioid Subcommittee pursuant Senate Bill 19-008. Starting in March 2020, all Commission meetings used a virtual platform in an effort to limit the spread of COVID-19. Additionally, in March, Commissioners approved a motion to suspend all Commission

proceedings until June. This resulted in a delay in reviewing the recommendations from the Task Forces and Subcommittee by the Commission and subsequently in providing the mandated information to the General Assembly (as mandated by House Bill 19-1149 and Senate Bill 19-008). The Commission approved two recommendations in Fiscal Year 2020 from the Pretrial Release Task Force and heard six preliminary recommendations from the Age of Delinquency, the Drug Offense Task Forces, and the Opioid Subcommittee. On June 24, 2020, Governor Polis addressed a biennial letter to the Commission directing the work of the Commission.





# 4

## Recommendations and Outcomes

This section presents the three recommendations approved by the Commission in Fiscal Year 2020. It should be noted that, due to the pandemic, the Commission suspended its proceedings from April to June 2020. This suspension resulted in a delay in reviewing six recommendations from the Age of Delinquency Task Force, the Drug Offense Task Force and the Opioid Investigations Subcommittee; consequently, this work was not completed in Fiscal Year 2020, the focus of this report. Not all of the Commission's recommendations are legislative in nature, and recommendations that do become bills are not always signed into law. Recommendations from the Pretrial Release Task Force follow.

These recommendations include the original text approved by the Commission. Please note the following formatting guides:

- Numbering of recommendations in this report is standardized. The notation will include the fiscal year of the recommendation (for example, "FY19"), letters indicating the task force from which the recommendation originated (e.g., Age of Delinquency by a "AD" or Mental Health/Jails Task Force by a "MH"), and a sequence number.
- Some recommendations may appear to have been skipped or missing, but this is not the case. If a recommendation was numbered and presented to the Commission, but not approved, it is not included in this report.
- Recommendations may include additions to existing statutory or rule language as indicated by CAPITAL letters or deletions that are represented as ~~strikethroughs~~.

## Pretrial Release Task Force

### **FY20-PR#01. Implement pretrial measurement and data requirements [Policy]**

Local pretrial service programs, the State Court Administrator's Office and other data repository entities shall gather and submit specific, case and/or person level data elements to the Division of Criminal Justice (DCJ) annually. These data must include distinct performance and outcome measures (the detailed data elements may be found in the appended Addendum). The Division of Criminal Justice in consultation with a statutorily created statewide pretrial services data advisory group (see Commission Recommendation FY20-PR#02) will establish the required data elements [Note: The required 1.0 FTE and the one-time appropriation for information technology requirements related to these functions are found in FY20-PR#02]. The elements of this policy recommendation include the following:

- To promote statewide data consistency, a statewide central repository for all pretrial services data is required. This central repository will be located in the Division of Criminal Justice in the Colorado Department of Public Safety.
- The following distinct categories of pretrial services data to be utilized by pretrial services entities and reported to DCJ as outcome and performance measures have been identified: crime rate, arrest and demographics; initial bond period, including assessment, bond recommendations, bond ordered, and jail pretrial data; jail pretrial population data and sentencing outcomes; and supervision related outcomes.
- The statewide pretrial services data advisory group is recommended to use the Recommended Pretrial Services Data Elements (see Addendum) to guide oversight of data collection for pretrial outcomes and to gain agreement among system stakeholders for performance measurement of pretrial programs.
- Implementation timelines for the collection and submission of required pretrial data by the required pretrial entities will be determined by DCJ in collaboration with the statewide pretrial services data advisory group.

DCJ shall also undertake the following:

- Determine that risk assessment instruments have been evaluated and validated in Colorado to maximize accuracy and to statistically minimize bias on the basis of race, ethnicity and gender.
- The data analysis and evaluation for bias on the basis of race, ethnicity and gender regarding the outcomes of the bond setting process, including the type of bond set, the amount of any secured monetary condition of bond, and any other conditions of release on bond must be performed.
- The development of training, technical support processes and software/ applications to assist the impacted entities in the collection and submission of the required data elements. DCJ may contract with information technology vendors to develop the data collection and submission infrastructure and applications (related appropriation in FY20-PR#02).



**Discussion**

National standards recommend outcome and performance measures of mission-critical data for pretrial service programs.<sup>4</sup> Currently, Colorado does not meet the national standards of data required to measure pretrial services performance and outcome impact. This shortcoming is due to a number of identified gaps:

- variation across jurisdictions in the organizational structure, scale, and scope of pretrial operations;
- presence of multiple software systems that vary from county to county;
- lack of shared, unique person identifiers;
- variations in definitions of data elements, resulting in the same data points measuring different elements in practice; and
- a lack of a consistent statewide agreement on performance measures and the data to represent these measures.

This environment leads to pretrial measurement that is not useful to policy makers, pretrial program operators and the public served. This policy provides implementation recommendations for the data elements and outcomes to be gathered by local pretrial service programs at key decision points in the State of Colorado pretrial criminal justice system. This will derive performance indicators for pretrial services to set bond and establish conditions of release for felony and misdemeanor level offenses. Data measures enable pretrial service agencies to gauge more accurately their programs' effectiveness in meeting agency and justice system goals. This includes bias reduction, protection of pretrial liberties, the maintenance of least restrictive conditions during pretrial as well as maintaining the integrity of the judicial system and enhancing public safety. These data will help to ensure that risk assessment instruments and supervision conditions are accurately measuring client risk, minimizing biases related to race, gender, economics and subjective criminal justice system decision making. The recommended data elements within this recommendation are definable and measurable for most pretrial service programs, are consistent with established national pretrial release standards<sup>1</sup> and are compatible with the mission and goals of individual pretrial programs. These data recommendations are also designed to ensure the best use of taxpayer funds while meeting the expectations of the community and criminal justice system and the needs of individuals at pretrial services decision points.

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<sup>4</sup> For example, see *Measuring What Matters: Outcomes and Performance Measures for the Pretrial Services Field* (2011) (See [nicic.gov/measuring-what-matters-outcome-and-performance-measures-pretrial-services-field](http://nicic.gov/measuring-what-matters-outcome-and-performance-measures-pretrial-services-field)).

**FY20-PR#01. ADDENDUM: Recommended pretrial services data elements**

Data Category	Data Point	Availability	Data Source	Comments
<b>CRIME RATE</b>				
Crime Rate	Crime Rates	Green	NIBRS	
Crime Rate	Criminal Cases Filed	Green	SCAO	
<b>ARREST</b>				
Arrest	Arrests: Traffic, Misdemeanor, and Felony	Green	CBI/CCIC	
Arrest	Arrest Date	Green	NIBRS/CCH	
Arrest	Pending Cases (at time of arrest)	Yellow	SCAO/Pretrial/CCIC	Distinguish pretrial vs. post-conviction
Arrest	Warrant Upon Affidavit	Yellow	SCAO	
Arrest	Warrantless Arrest	Yellow	SCAO/NIBRS	
Arrest	Summons Rate (Detention vs. non-detention eligible)	Yellow	SCAO/NIBRS	
<b>DEMOGRAPHICS</b>				
Demographics	Age/DOB	Green	SCAO	Person level
Demographics	Gender	Green	SCAO	Person level
Demographics	Race	Yellow	Jail/Pretrial	Person level
Demographics	Ethnicity	Yellow	Jail/Pretrial	Person level
Demographics	Employment/Education	Yellow	Pretrial	Person level
<b>INITIAL BOND PERIOD</b>				
Initial Bond Period	Attorney Representation at 1st Appearance	Yellow	SCAO	
Initial Bond Period	Date of Arrest to Date of Bond Posted to Date of Release	Green	SCAO	Bond posted
Initial Bond Period	Concurrence/Agreement/Override Rate	Yellow	Pretrial	Person level Recommendation = Order
Initial Bond Period	Time From Release to Start of Pretrial Supervision	Yellow	Pretrial/Jail	
Initial Bond Period	Bond Type/% PR	Green	SCAO	Person level
Initial Bond Period	Bond Amount	Green	SCAO	

Data Category	Data Point	Availability	Data Source	Comments
<b>INITIAL BOND PERIOD (continued)</b>				
Initial Bond Period	Initial Bond Conditions	Yellow	Pretrial	Hard to get consistency across JDs  Recommended and ordered: Electronic monitoring Monitored sobriety General case management Admin/low level supervision Protection order
Initial Bond Period	CPAT & CPAT-R Other Pretrial Risk Assessments	Yellow	Pretrial	Person level Individual items
Initial Bond Period	Other Assessments (ODARA, DVSI, RANT)	Yellow	Pretrial	Name of assessment and Yes/No
Initial Bond Period	Charge Levels	Green	SCAO	
Initial Bond Period	Pretrial Released/ Detained Rate	Red	Jail	Person level (excluding holds)
Initial Bond Period	Bondable/Non-Bondable Holds	Red	Jail	Person level Hold Y/N-preventing release Type of hold(s); Other County, Probation, Parole, Federal, Sentenced, Other
Initial Bond Period	Charge Type	Green	SCAO	At initial advisement (arrest charges)
Initial Bond Period	Universal Screening-% of arrests on new charges (warrantless arrests)	Yellow	SCAO/NIBRS	Person level Define denominator Did your pretrial services assess those presenting on affidavit warrants or warrantless arrests? All filings except summons
Initial Bond Period	PR Rate (Supervised)	Green (supervised) Yellow (unsupervised)		SCAO has bond type for everyone-they would need input to differentiate supervised
Initial Bond Period	Commercial Surety Rate (Supervised)	Green (supervised) Yellow (unsupervised)		SCAO has bond type for everyone-they would need input to differentiate supervised
Initial Bond Period	Cash Only Bonds		SCAO	

Data Category	Data Point	Availability	Data Source	Comments
<b>JAIL POPULATION DATA</b>				
Jail Population Data	Pretrial Detainee Length of Stay	Red	Local jails	Required by new legislation for all (not just pretrial), point in time snapshot # of days in custody unsentenced without holds
Jail Population Data	Jail Bookings and Jail Releases	Green	Local jails	
Jail Population Data	Jail Average Daily Population	Green	Local jails	
<b>SENTENCING</b>				
Sentencing	Criminal Case Dispositions	Green	SCAO	Should include plea vs. verdict at trial
Sentencing	In custody at sentencing Y/N	Green	SCAO	Never posted bond by sentence date
Sentencing	Most restrictive sentence	Green	SCAO	
<b>SUPERVISION RELATED</b>				
Supervision Related	Court Appearance Rate (Supervised)	Green	Pretrial	Person level. Tracked by supervision event Currently Y/N need to delineate 60/90/120 days
Supervision Related	% incurring FTA who return to court within 30/90/120 days (Supervised)			Required in proposed legislation
Supervision Related	Public Safety Rate (Supervised)	Green	Pretrial	Person level. Find a way to track type/severity of new filing (e.g., new VRA crimes) Aim to include non-supervised population
Supervision Related	Public Safety Rate (Supervised)—Violent/Serious Crime		SCAO	VRA Crimes
Supervision Related	Technical Compliance Rate (Supervised)	Green	Pretrial	Person level. A lot of variation by districts Aim to categorize (like with PS rate)
Supervision Related	Revocations (Supervised)			Summons bond

**Outcome**

This recommendation, approved by the Commission on November 8, 2019, is dependent on statutory changes proposed in FY20-PR #02 and is related to Recommendation FY20-PR #03.

**FY20-PR#02. Create a statewide Pretrial Services Data Advisory Group [statutory]**

In §16-4-106, C.R.S., create a statewide pretrial services data advisory group staffed by the Division of Criminal Justice with a sunset of five years from legislation enactment. The data advisory group must include representation of pretrial stakeholders, including the State Court Administrator’s Office. The Division of Criminal Justice is the central repository for all pretrial services data (see Commission Recommendation FY20-PR#01). One (1.0) FTE is required for staffing the statewide pretrial services data advisory group and for pretrial services data management, analysis, and annual reporting and an additional one-time appropriation will be necessary to meet the information technology requirements.

The current statutory pretrial data reporting requirement language in §16-4-106, C.R.S., should be revised to include the following (see specific Proposed Statutory Language below):

- Remove specific data elements from §16-4-106 to be replaced with recommendations from the statewide pretrial services data advisory group made to the DCJ office responsible for implementation of the defined data requirements.
- Replace the State Court Administrator’s Office as the reporting body with the Division of Criminal Justice.
- Create a statewide pretrial services data advisory group appointed by the Executive Director of the Colorado Department of Public Safety and staffed by the Division of Criminal Justice.
- Data reporting will be annual, consistent with current language in §16-4-106.

**Discussion**

National standards recommend outcome and performance measures of mission-critical data for pretrial service programs.<sup>5</sup> Local pretrial service programs shall gather and submit specific, case level data elements to the Division of Criminal Justice, which will ensure consistency in measurement of all pretrial programs across the state. The proposed statutory changes correspond with the related policy recommendation, FY20-PR#01: Implement Pretrial Measurement and Data Requirements.

**Proposed Statutory Language**

Revise §16-4-106, C.R.S., subsection (6) and replace subsection (7).  
16-4-106. Pretrial services programs.

(6) Commencing July 1, 2020, each pretrial services program established pursuant to this section shall provide an annual report to the **DIVISION OF CRIMINAL JUSTICE** ~~judicial department~~ no later than November 1 of each year, regardless of whether the program existed prior to May 31, 1991. **THE ANNUAL REPORT FROM PRETRIAL SERVICES PROGRAMS MUST INCLUDE THE DATA AND INFORMATION REQUIRED BY THE DIVISION OF CRIMINAL JUSTICE.** Notwithstanding section 24-1-136(11)(a) (I), the **DIVISION OF CRIMINAL JUSTICE** ~~judicial department~~ shall present an annual combined report to the house and senate judiciary committees of the house of representatives and the senate, or any successor committees, of the general assembly. ~~The report to the judicial department must include, but is not limited to, the following information:~~

~~(a) The total number of pretrial assessments performed by the program and submitted to the court;~~

<sup>5</sup> For example, see *Measuring What Matters: Outcomes and Performance Measures for the Pretrial Services Field* (2011) (See [nicic.gov/measuring-what-matters-outcome-and-performance-measures-pretrial-services-field](http://nicic.gov/measuring-what-matters-outcome-and-performance-measures-pretrial-services-field)).

- ~~(b) The total number of closed cases by the program in which the person was released from custody and supervised by the program;~~
  - ~~(c) The total number of closed cases in which the person was released from custody, was supervised by the program, and, while under supervision, appeared for all scheduled court appearances on the case;~~
  - ~~(d) The total number of closed cases in which the person was released from custody, was supervised by the program, and was not charged with a new criminal offense that was alleged to have occurred while under supervision and that carried the possibility of a sentence to jail or imprisonment;~~
  - ~~(e) The total number of closed cases in which the person was released from custody and was supervised by the program, and the person's bond was not revoked by the court due to a violation of any other terms and conditions of supervision; and~~
  - ~~(f) Any additional information the judicial department may request.~~
- (7) COMMENCING JULY 1, 2020, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY SHALL FORM A STATEWIDE PRETRIAL SERVICES DATA ADVISORY GROUP WHICH SHALL ADVISE AND INFORM THE DIVISION OF CRIMINAL JUSTICE REGARDING THE REQUIRED DATA AND INFORMATION IN THE ANNUAL REPORTS REQUIRED BY THIS SECTION. THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY SHALL APPOINT THE PRETRIAL SERVICES DATA ADVISORY GROUP MEMBERS AND THE GROUP MUST INCLUDE, AT A MINIMUM, A REPRESENTATIVE FROM: THE DIVISION OF CRIMINAL JUSTICE; THE STATE COURT ADMINISTRATORS' OFFICE; THE COLORADO DISTRICT ATTORNEYS' COUNCIL; THE OFFICE OF THE STATE PUBLIC DEFENDER; A PRETRIAL SERVICE AGENCY OR PROGRAM; COUNTY SHERIFFS OF COLORADO; COLORADO ASSOCIATION OF CHIEFS OF POLICE; COLORADO COUNTIES, INC.; A VICTIM ADVOCATE; AND A REPRESENTATIVE OF AN ORGANIZATION THAT ADVOCATES FOR INDIVIDUALS IMPACTED BY THE CRIMINAL JUSTICE SYSTEM. THE PRETRIAL SERVICES DATA ADVISORY GROUP SHALL MEET PERIODICALLY AND SERVE AS AN ADVISORY GROUP TO THE DIVISION OF CRIMINAL JUSTICE FROM JULY 1, 2020 THROUGH JUNE 30, 2025.**
- ~~(7) For the reports required in subsection (6) of this section, the pretrial services program shall include information detailing the number of persons released on a commercial surety bond in addition to pretrial supervision, the number of persons released on a cash, private surety, or property bond in addition to pretrial supervision, and the number of persons released on any form of a personal recognizance bond in addition to pretrial supervision.~~

### Outcome

This recommendation requires statutory change. This recommendation was approved by the Commission on November 8, 2019 and was first available for action during the FY 2020 legislative session. This recommendation is interdependent with Recommendation FY20-PR #01 and related to Recommendation FY20-PR #03. Aspects of this recommendation were included as part of Senate Bill 2020-161 which was introduced on February 4, 2020. 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.

**FY20-PR#03. Implement Bail Bond Reform [Statutory]**

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) is described in detail below followed by “Discussion.” Draft statutory language is included in the “Appendix”.

**ELEMENT 3.1 Require a pretrial risk assessment instrument that will assist the court in release decisions for felony, misdemeanor and traffic level offenses that do not qualify for a mandatory summons.**

Amend §16-4-103 (3) (b), C.R.S., to require that a pretrial risk assessment instrument must be available and shall be utilized by state judicial officers in all counties throughout Colorado, including Denver County Court, for the purpose of assisting in all release decisions for felony, misdemeanor and traffic cases when the offense charged does not meet the requirement for a mandatory summons.

The court shall not use the results of any such instrument as the sole basis for determining release or detention. Other criteria shall be considered, including those circumstances contained in §16-4-103 (5), C.R.S. The results of a risk assessment provided to the court must include the risk category of the defendant along with the descriptive success rates for each risk category, if available.

Effective date of this section January 1, 2021.



**ELEMENT 3.1.**  
**Draft**  
**Statutory**  
**Language**

See statutory language §16-4-103 (Appendix F).

**ELEMENT 3.2**

**Criteria for the use of a pretrial risk instrument and data collection for validation and impact of an instrument.**

Any pretrial risk assessment instrument used in Colorado must meet the following criteria:

- By December 1, 2020, the Division of Criminal Justice (DCJ) shall compile an inventory of approved risk assessment instruments available and authorized for use in Colorado. Any instrument authorized and approved by DCJ must be empirically developed and validated.
- By January 1, 2021, any risk assessment instrument approved for use must have been evaluated and validated in Colorado to maximize accuracy and to statistically minimize bias of race, ethnicity and gender. Additionally, by February 1, 2022, the outcomes of the bond setting process, including the type of bond set, the amount of any secured or unsecured monetary condition of bond, and any other conditions of release on bond, if available, must be evaluated for bias on the basis of race, ethnicity, and gender by judicial district.
- The evaluations for bias based on race, ethnicity and gender shall be conducted by DCJ. DCJ shall develop a data collection process for all judicial districts in order to obtain the necessary data to conduct or have conducted the evaluation and shall report on the limits of the data, if any.
- Any approved risk assessment instrument must be re-evaluated for accuracy and for bias as described above at least once every three years. These evaluations, at a minimum, must include considerations of release rates, release conditions, technical violations or revocations and performance by race, ethnicity and gender to monitor disparate impact within the system.
- The Department of Public Safety, as part of their SMART Act hearing, shall present the findings of any study conducted to evaluate the risk assessment instrument for bias and efforts to reduce any identified bias.
- Beginning January 1, 2024, any risk assessment instrument approved for use, to the extent possible, must provide pretrial decisions-makers separate risk category information for each of the pretrial risks identified in §16-4-103(3)(a), C.R.S.
- In order to evaluate the instrument for bias and proper measurement of risk factors, beginning in January 1, 2021, each jurisdiction shall collect all relevant data as requested by DCJ. The data must, at a minimum, include the following information for each person assessed:
  - Race, ethnicity and gender
  - The pretrial risk category
  - Scores assigned to each underlying variable included in a risk assessment instrument

- The total risk assessment instrument score
- Any recommendation made by a structured decision-making instrument, if available
- Whether the recommendation of the structured decision-making instrument was followed by the court, if available
- The bond type set by the court
- The conditions of bond set by the court, which must include, but is not limited to, whether any monetary condition was imposed
- If the defendant failed to appear for court while on pretrial release, whether the defendant subsequently appeared in the case within 30 days, ninety days and one hundred twenty days, and, to the extent information is available, whether the appearance was voluntary, through arrest on a warrant on the case, or arrest for another criminal case
- The pretrial supervision outcome
- Bond revocations, if any
- The results of any additional assessments used in order to provide additional information to the court
- DCJ shall provide technical assistance to local pretrial services program stakeholders to include training, education, informational materials and tools to track outcomes and fidelity to best practices. DCJ shall also collect, analyze, and report centralized data to identify pretrial services trends and outcomes throughout the state. The State Court Administrator’s Office and the Department of Public Safety shall cooperate to develop and agree upon information sharing and reporting methodologies to be used to allow for the data collection and evaluations required pursuant to the provisions of this section.

**ELEMENT 3.2.**  
**Draft**  
**Statutory**  
**Language**

See statutory language §16-4-103 (Appendix F).

**ELEMENT 3.3**

**Expand pretrial services statewide and provide state resources for certain assessment and supervision costs with the priority given to assessment costs.**

Amend §16-4-106, C.R.S., such that pretrial services must exist in all counties in Colorado and the Colorado General Assembly shall create a Pretrial Services Fund that consists of any money appropriated by the General Assembly to the Fund and any money received through gifts, grants or donations. The Pretrial Services Fund shall be operated by DCJ and allocation of funds to counties shall be executed by the Division in accordance with the priorities as outlined below. The money in the fund shall be subject to annual appropriation by the General Assembly for implementation of the provisions of Title 16 Article 4. The money in the fund must be used to fund individual counties or counties working in cooperation with each other that request funds to

operate or assist in the operation of a pretrial services program as required by §16-4-106(1), C.R.S., and to fund the necessary program services required by this section to be conducted by DCJ.

Money may be used by counties for the administrative and personnel costs related to the operation of a pretrial service program and any adjunct services including, but not limited to, program development, assessment services, supervision services, monitoring and contract services when appropriate. **Money may be used by counties to supplant the county funds currently allocated for pretrial services program, to create a new pretrial services program or to enhance the current county pretrial services program.**

Funding priorities for pretrial services programs shall be as follows:

1. **Any cost associated with start-up of a new pretrial services program.**
2. **Assessment services allowing for the release of arrestees and the program development for these assessment services.** Program development must include plans for the collection of data as required by the provisions of Commission Recommendations FY20-PR#01 and FY20-PR#02. Assessment services shall be funded pursuant to a formula that estimates the average amount of time for an individual assessment plus court time, an average salary for a pretrial services worker and the number of assessments predicted for that county. No county shall be provided funds for assessment services in excess of the dollar amount that is the equivalent, to the extent possible, to the statewide average cost of two (2.0) FTEs. Assessment dollars may be provided based on the county numbers or judicial district numbers, whichever is more practicable and cost-effective as determined by DCJ. Assessment services shall be directly provided by the county/judicial district. No costs of assessment shall be assessed against any defendant at any time.
3. **Supervision services for the higher risk offenders that require supervision.** Supervision services shall conform to the recommendation in ELEMENT 3.6. No county shall be provided funds for supervision services in excess of the dollar amount that is equivalent, to the extent possible, to the statewide average cost of one (1.0) FTE. The costs of supervision including the costs of compliance with any term or condition of supervision may only be assessed as a cost of prosecution upon conviction and only if the person does not qualify as indigent under the standards of eligibility for court-appointed counsel at the time of sentencing.

**ELEMENT 3.3.**  
**Draft**  
**Statutory**  
**Language**

See statutory language §16-4-106 and §16-4-106.5. Pretrial services fund created (Appendix F).

**ELEMENT 3.4      Expand the use of summons to include mandatory summons and discretionary summons, each with appropriate public safety overrides.**

Replace §16-5-206 and expand the mandatory use of summons for misdemeanors, traffic and petty offenses and give local jurisdictions discretion to use summons for felony offenses.

A summons shall be issued for all offenses for which monetary conditions of release are prohibited pursuant to §16-4-113(2), C.R.S., unless the location of the person is unknown and the issuance of an arrest warrant is necessary in order to subject the person to the jurisdiction of the court.

A summons shall be issued for misdemeanor offenses and municipal offenses for which there is a comparable state misdemeanor charge unless certain exceptions exist. Those exceptions are:

- Arrest is mandatory under another statute.
- The crime is defined as a “crime” in §24-4.1-302(1), C.R.S., for purposes of the rights of victims; or
- The facts and circumstances indicate a substantial risk that the person will attempt to flee prosecution; or
- The facts and circumstances indicate an imminent and substantial risk that a victim, witness, or any person other than the defendant may be harmed if the person is not arrested; or
- There is probable cause that the person committed an offense under §42-4-1301, C.R.S.; or
- There is probable cause that the person used or possessed a deadly weapon as defined in §18-1-901(3)(e), C.R.S., during the commission of the offense; or
- The location of the person is unknown and the issuance of an arrest warrant is necessary in order to subject the person to the jurisdiction of the court.

For felony offenses, unless there is a statutory provision mandating arrest, law enforcement officers retain the discretion to release a person pending a filing decision by the district attorney.

After the district attorney has determined a felony charge will be filed, the district attorney may request that the court issue a summons or a warrant for the person’s arrest. For Class 4, 5 or 6 felonies and level 3 or 4 drug felonies, there shall be a preference and a presumption in favor of a summons instead of an arrest or arrest warrant unless certain exceptions exist. Those exceptions are:

- Arrest is mandatory under another statute.
- The crime is defined as a “crime” in § 24-4.1-302(1), C.R.S., for purposes of the rights of victims; or
- The facts and circumstances indicate a substantial risk that the person will attempt to flee prosecution; or

- The facts and circumstances indicate an imminent and substantial risk that a victim, witness, or any person other than the defendant may be harmed if the person is not arrested; or
- There is probable cause that the person committed an offense under 42-4-1301, C.R.S., or
- There is probable cause that the person used or possessed a deadly weapon as defined in 18-1-901(3)(e), C.R.S., during the commission of the offense; or
- The location of the person is unknown and the issuance of an arrest warrant is necessary in order to subject the person to the jurisdiction of the court.

**ELEMENT 3.4.**  
**Draft**  
**Statutory**  
**Language**

See statutory language §16-5-206 and §16-4-207 (Appendix F).

**ELEMENT 3.5**

**Eliminate Section 18-8-212 (Violation of bail bond conditions) and establish the crime of violation of bail bond appearance conditions. Establish a contempt process for violation of non-appearance bail bond conditions. Clarify the crime of protection order violation.**

Delete §18-8-212, regarding the crime of violation of a bail bond conditions, and add §18-8-212.5 with the following provisions:

- (1) A person who is released on bond of whatever type, and either before, during or after release is accused by complaint, information, indictment or the filing of a delinquency petition of any felony arising from the conduct for which he or she was arrested, commits a class 6 felony if he knowingly fails to appear for trial or other proceedings with the intent to avoid prosecution.
- (2) A person who is released on bail bond of whatever type, and either before, during or after release is accused of any felony or misdemeanor offense arising from the conduct for which he or she was arrested, commits a class 2 misdemeanor if he or she intentionally fails to appear for trial or other proceedings for which victims or witnesses have appeared in court.
- (3) No violation of bail bond appearance conditions shall be brought against any person subject to the provisions of §16-4-113(2).

Insert in Article 4 of Title 16 procedures regarding bail revocations. The remedy for violation of a non-appearance bail bond condition(s) must be revocation of the bond as described below.

- It will be clarified that the remedy for violations of non-appearance bail bond conditions must include::
  - Revocation of the original bond for violation of the terms and conditions of release, and setting of a new monetary condition of bond;
  - Revocation and reinstatement of the original bond, after review of the nature of the violation, with additional non-monetary conditions designed to mitigate the risk of flight or the risk to the safety of another person; and

- Revocation and reinstatement of the original bond after a temporary sanction of up to 72 hours when the person admits to a violation of bond conditions and agrees to a short-term sanction.
- When the violation of supervision involves substance use or abuse and the condition of bond requiring monitored sobriety or prohibited use of alcohol or other controlled substance is consistent with the requirements of ELEMENT 3.6, the court may revoke the bond and reinstate the bond with a temporary sanction as described above. As an alternative to revocation, if the defendant consents, the court may refer the person for treatment services. The court may revoke the bond and set a new bond or conditions of bond when the person refuses intermediate sanctions and has failed to comply with the conditions of bond.

Clarify in §18-1-1001(1) and (2) that a protection order issued pursuant to this section shall remain in effect from the time the person is issued a summons or advised of the protection order by the court or other judicial officer through the duration of the case, unless otherwise ordered by the court.

Clarify in §18-1-1001(3) that a protection order issued under this section is for the protection of an alleged victim or witness and not for the protection of the defendant including the protection of the defendant from the use of alcohol or other substances. Clarify that the issuance of a protection order pursuant to this section must be supported by evidence and input of the victim, when available.

Amend §18-6-803.5 to clarify that a “protected person” as defined in (1.5) (a) must not include the defendant.

**ELEMENT 3.5.**  
**Draft**  
**Statutory**  
**Language**

See statutory language §18-8-212, §18-1-1001, §18-6-803.5 (Appendix F).

**ELEMENT 3.6**      **Clarify conditions of release and limitations on the use of conditions.**

The current language in the bail statutes requires the court to impose the least restrictive alternatives as conditions of bond. It is necessary to clarify this in order to avoid applying certain conditions, especially in the area of monitored sobriety.

Clarify in §16-4-104(1), C.R.S., that the court shall determine the type of bond and conditions of release, but that the conditions of release must be limited to requiring that the person appear at any future court date and that the person comply with current mandatory bond conditions. The court may require additional conditions of release when there is sufficient evidence that an additional condition of release will serve to mitigate:

- the risk that the person will pose a substantial risk of danger to the safety of any other person or the community,
- the risk that the person will attempt to flee prosecution, or
- the risk that the person will attempt to obstruct or otherwise willfully avoid the criminal justice process.

The statute should reflect that setting conditions of monitored sobriety without any support services or when alcohol or controlled substances are not an issue contrives an individual to failure. Therefore, monitored sobriety, prohibited use and electronic monitoring shall not be imposed as a condition of bond unless the court enters specific and individualized findings on the record that monitored sobriety or electronic monitoring is necessary in this specific case because it will mitigate a substantial risk of flight or the physical safety of any other person.

There shall be no imposition of monitored sobriety, prohibited use, or electronic monitoring for any misdemeanor case that is not a Victim Rights Amendment (VRA) case, a DUI case, or a case that involves the use or possession of illegal substances or firearms. In these cases, monitored sobriety shall not be imposed automatically. The court shall make the required specific and individualized findings on the record.

Persons committing offenses in §16-4-113(2), C.R.S., shall not be subject to any bond conditions limiting or monitoring the use of alcohol or other controlled substances or GPS supervision.

Clarify in Section §16-4-104, C.R.S., that a person cannot be revoked on pretrial supervision for failure to pay for any pretrial supervision or services that are a condition of release.

Clarify in Section §16-4-104, C.R.S. that “a governmental entity may directly operate a pretrial supervision services program approved pursuant to subsection (1) of this section or enter into a contract with a private profit or nonprofit entity or an agreement with another local governmental entity to provide pretrial supervision services in the county. Prior to entering into a contract with a private profit or nonprofit entity, the governmental entity shall ensure that private entity shall operate without an identifiable conflict. Additionally, each judge requiring pretrial services supervision shall ensure that any supervision or other conditions of release for a defendant under pretrial supervision are the least restrictive conditions of release and are not required for the purposes of financial benefit or gain by or for any entity.”

No person under pretrial supervision shall be placed under any conditions that have not been directly ordered by the court. No person released on a monetary condition of bond through a commercial surety shall be required to comply with conditions of supervision that have not been directly ordered by the court.

**ELEMENT 3.6.**  
**Draft**  
**Statutory**  
**Language**

See statutory language §16-4-104, §16-4-104.5. Types of Bond (Appendix F).

**ELEMENT 3.7      Establish an expedited pretrial release process.**

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 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 if a monetary condition of bond is not posted. 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, 2020, 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, who must include, at a minimum, a representative of the District Attorney’s Office, the Public Defender, the Sheriff’s Office within the judicial district, the chief judge or his/her designee, a representative of the pretrial services program, and a victim advocate. The criteria shall be developed in collaboration with DCJ and consistent with best practices in pretrial release. In the development of the criteria, each judicial district shall solicit and obtain the input of at least one individual, or the family member of one individual, who has been incarcerated in the judicial district due to an inability to pay a monetary condition of bond and consider that input in the development of the administrative order. The criteria shall be implemented through the administrative order. The criteria must be objective and must be guided by the principles of release as outlined in §16-4-104, C.R.S.
- 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 must 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>6</sup>

<sup>6</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]).



- When developing the criteria for each judicial district, the Chief Judge and the stakeholders shall:
  - incorporate the standards as prepared by DCJ pursuant to the provisions of this section and the recommendations in ELEMENT 3.8.; and
  - consider the practices in all jurisdictions within and throughout the state to promote some statewide consistency in implementation, with deviation from core practices only to the extent that it is necessary to address unique issues that exist within 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 remains local, but provide certain state-wide standards guiding the decision-making that will incorporate best practices and the research into locally developed criteria.
  - 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 results in a more complicated release process.
  - to reduce the negative consequences to the person who does require placement in a jail pod/ population.
- Local law enforcement shall be provided the criteria for each judicial district they serve to allow adherence to the mandatory use of summons, as well as the discretionary arrest criteria, with respect to any person and to ensure that law enforcement can properly advise the public and any victim of the criteria used.

#### **Administrative Order: Release Guidance**

The Division of Criminal Justice (DCJ) shall be responsible for developing statewide 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 the delivery of these assessment services shall be accomplished by a county/ judicial district employee or contract official and not by a for-profit entity. That person/entity shall be authorized to release persons assessed eligible for release pursuant to the criteria without financial conditions of bond, but with the statutorily-mandated bond conditions and other conditions as determined by statute and the administrative order. That person/entity 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 Division of Criminal Justice 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.

The administrative order must comply with and implement the provisions of House Bill 19-1225.

**ELEMENT 3.7.**  
**Draft**  
**Statutory**  
**Language**

See statutory language §16-4-102 and §16-4-103 (Appendix F).

**ELEMENT 3.8**

**Division of Criminal Justice of the Department of Public Safety and duties related to the Pretrial Services Fund, pretrial services standards, pretrial risk assessment, and pretrial technical assistance.**

This element includes the following components regarding duties assigned to the Division of Criminal Justice:

- The Division of Criminal Justice (DCJ) in the Department of Public Safety is authorized to administer pretrial funding from the Pretrial Services Fund that consists of any money appropriated by the General Assembly to the Fund and any money received through gifts, grants or donations and to execute all contracts with units of local government or nongovernmental agencies for the provision of pretrial service programs and services.
- DCJ is authorized to establish standards for pretrial service programs operated by units of local government or nongovernmental agencies. Such standards must prescribe minimum levels of services based upon national standards and best practices. The standards shall be promulgated or revised after consultation with representatives including, but not limited to, a pretrial service agency, the office of the state court administrator, the public defender’s office, district attorney’s council, local law enforcement, victim service agency, non-governmental organization with expertise in pretrial justice, and a person with lived experience in the criminal justice system.
- DCJ shall compile an inventory of approved pretrial risk assessment instruments available and authorized for use in Colorado. Any instrument authorized and approved by DCJ must be empirically developed and validated. Any approved risk assessment instrument must be re-evaluated for accuracy and for bias as described above at least once every three years. These evaluations must, at a minimum, include considerations of release rates, release conditions, technical violations or revocations and performance by race, ethnicity and gender to monitor disparate impact within the system.

- DCJ shall provide technical assistance to pretrial service programs, courts, and local jurisdictions in developing pretrial justice services.

**ELEMENT 3.8.**  
**Draft**  
**Statutory**  
**Language**

See statutory language §16-4-103.5 (Appendix F).

**ELEMENT 3.9**

**Revise the initial bond hearing process and the considerations of monetary conditions of bond.**

For individuals who do not meet the criteria for expedited pretrial release (see *ELEMENT 3.7*), revise the following statutory elements (in §16-4-104, -107, & -109, C.R.S.) related to the initial bond hearing process, including the considerations of the conditions of monetary bond:

- Assess persons before the hearing, require the court to consider financial circumstances of persons when setting bond, and presume release on bond with the least restrictive conditions.
- The court shall further presume the release of the defendant without monetary conditions unless the court finds that one or more of the following exist:
  - No reasonable non-monetary conditions will address public safety and flight risk [**ELEMENT 3.9.A**].
  - Require the filing of felony charges within three days, excluding Saturdays, Sundays and legal holidays, unless good cause is shown or with agreement of the parties [**ELEMENT 3.9.B**].
  - Require reconsideration of monetary and/or non-monetary conditions of bond in both felony and misdemeanor cases (a second look) when good cause is shown and expand the definition of bonding commissioner [**ELEMENT 3.9.C**].
  - Create an expedited docket for cases where the defendant is in custody on a monetary bond that he/she has not posted [**ELEMENT 3.9.D**].

*Each “ELEMENT” (3.9.A through 3.9.D) is described below in greater detail.*

***ELEMENT 3.9.A: Pretrial assessment and initial considerations of monetary bond and bond conditions.***

At the initial court appearance, the court shall:

- Consider the person’s risk assessment as provided by an empirically-based risk assessment instrument or instruments;
- Consider the individual circumstances of the defendant including his/her financial circumstances. (This consideration is supported by all recent case law.)
- Consider the nature and severity of the alleged offense
- Consider victim input, if received. (This is always considered in bail setting, subject to the presumption of innocence.)

- Consider all of the relevant statutory factors as outlined in §16-4-103, -104 and -105, C.R.S. and §16-5-206, C.R.S. Retain the provisions that are included in current law about personal factors that the court may consider. This includes prior record and prior failures to appear (FTAs) as they relate to the statutory criteria above.
- Presume release of the person with **least restrictive conditions** and **without the use of any financial conditions of bond**, unless the court finds:
  - that the person poses a substantial risk of danger to the safety of any other person or the community; or
  - that there is a substantial risk that the person will attempt to flee prosecution; or
  - that (1) there is a substantial risk that the person will attempt to obstruct the criminal justice process, or otherwise willfully avoid the criminal justice process; and (2) there are no reasonable non-monetary conditions of release that will reasonably assure the safety of any person or the community, that the person will not attempt to flee prosecution or that the person will not attempt to obstruct the criminal justice process, or otherwise willfully avoid the criminal justice process.

*[NOTE: In drafting the language for this section, it should be noted that the following language was included or amended from these sections in H.B.19-1226:]*

- Delete: 5(h): *“Any facts indicating the possibility of violations of the law if the person in custody is released without certain conditions of release”.*
- Strike 5(g) *“any prior failure to appear for court”* and create new subsection allowing consideration of any *“Prior failure to appear that indicate the person in custody’s intent to flee or avoid prosecution”.*
- Include this factor from HB19-1226: *“All methods of release to avoid unnecessary pretrial incarceration and to avoid unnecessary levels of supervision as conditions of pretrial release”.*
- Delete the following language in §16-4-104(2), C.R.S., *“Unless the DA consents or unless the court imposes certain additional individualized conditions of release...a person must not be released on an unsecured PR bond under [certain] circumstances.”*

***ELEMENT 3.9.B: Require the filing of felony charges within three working days.***

Eliminate long and unnecessary delays in filing of felony cases after the initial advisement and bail setting by the court. Require filing within three working days, excluding Saturdays, and Sundays and legal holidays, unless good cause is shown.

Throughout the state, courts differ as to the amount of time the DA has to file charges. Delays in this filing cause extended and unnecessary stays for persons in jail. A significant number of jurisdictions require quick turnarounds for filing of charges. Three business days is adequate time and, if the case has complicated issues or needs more investigation due to the severity of the charges, the DA can ask for additional time for good cause shown. Additionally, the parties can agree to additional time.

***ELEMENT 3.9.C: Require reconsideration of bond.***

Require a reconsideration hearing of determination of monetary and/or non-monetary conditions of bond in both felony and misdemeanor cases (a second look) when good cause is shown and on an expedited basis (no greater than 3 working days after the motion is filed or the request is made if the defendant is in custody on the present case), unless otherwise agreed to by the parties. This should protect against unnecessary detentions for long periods of time where the court might think a person was able to make a monetary bond, but they cannot. Motions must be in writing in instances of a VRA case, unless the district attorney consents.

Reasonableness must always be reconsidered, as it is constitutionally required. This will also give the court a chance to review the non-monetary conditions of bond to determine if they are reasonable and necessary as well as the least restrictive.

*[Note: This language will replace the 2013 language in §16-4-107, C.R.S., and merge this language with the existing language in §16-4-109, C.R.S.]*

For good cause shown, subsequent requests for reconsideration of bond conditions may be considered by the court if there is new or different information that has not been previously presented to the court. The Court may require subsequent reconsiderations be made in writing or may allow an oral motion, and shall allow the district attorney the opportunity to respond. The Court may rule on the basis of the pleadings, or may require a hearing on the matter.

***ELEMENT 3.9.D: Create a docket precedence.***

Create a docket precedence for cases where the defendant is in custody on a monetary bond that he/she has not posted. Defendants who are detained must have priority for trial and other evidentiary hearings over defendants who are at liberty. This priority should be reconciled with any other statutory priorities in the current law regarding speedy trial, domestic violence cases and sex assault cases.

In order to avoid unnecessary pretrial detention, persons in custody should be given priority in setting their cases. This will help reduce the length of stay for persons in the county jail.

**ELEMENT 3.9.**  
**Draft**  
**Statutory**  
**Language**

See statutory language §16-4-104, §16-4-107, and §16-4-109. See also, §16-4-105, Conditions of release (Appendix F).

**ELEMENT 3.10 Clarify public defender and district attorney involvement in bail hearings.**

Append §16-4-104, C.R.S., to clarify in statute that a person is entitled to counsel at the initial bail setting hearing. Clarify that counsel shall have adequate time to prepare for an individualized hearing on bail. Require the court to allow sufficient time on the docket to conduct an individualized hearing to receive the statutorily-mandated information from both the district attorney and defense counsel. Retain language that the district attorney has the right to appear and pretrial information shall be shared. Clarify that the district attorney and defense counsel are entitled to all risk assessment scores and individual item responses and answers on the risk assessment instruments.

**ELEMENT 3.10.****Draft  
Statutory  
Language**

See statutory language §16-4-104 (Appendix F).

**ELEMENT 3.11 Comprehensive training for stakeholders.**

A new section in statute must be created that requires training on pretrial practices for all relevant stakeholders, which must include judicial officers, district attorneys, public defenders, and alternative defense counsel. In 2019, the Commission recommended a policy that stakeholders receive pretrial practices training (see Pretrial Release Task Force Recommendation FY19-PR#08). No action in line with that policy recommendation has occurred to date and there is continuing concern regarding the failure of stakeholders, specifically within the judicial branch, to understand the law, policy and research with respect to bail reform.

The statute must require that each of these entities develop, deliver and/or make available in-depth and localized training to address the law, policy and research on pretrial practices and how each entity will work in cooperation with each other to establish pretrial practices in their jurisdiction consistent with best practices. Each entity shall be required to report to the joint judiciary committees in January 2021 describing in detail the following:

- The training curriculum, as developed by the department or agencies, and a description of how the training was delivered;
- The number of hours dedicated to the training by the state department, state agency or district attorney office and, additionally, the number of hours of training provided/supported within each jurisdiction;
- The number of persons who engaged in the training in each jurisdiction/office, specifically the number of judges, judicial officers, district attorneys and defenders trained;
- The percentage of the total judges, judicial officers, district attorneys and defenders that participated in the training;
- A description of how the jurisdiction has coordinated and jointly trained with other stakeholders and entities to ensure that pretrial practices are delivered effectively and efficiently.

**ELEMENT 3.11.**  
**Draft**  
**Statutory**  
**Language**

See statutory language §16-4-xxx (Appendix F).

**ELEMENT 3.12**

**Establish an expedited appeal process and a requirement for the appellate court to address constitutional issues raised in the appeal.**

The current appeal process is cumbersome and does not provide adequate review of bond decisions by a higher court. Further, the appeals court is not required to legally address the legal issues raised in any bail appeal.

Create in the provisions of Title 16 an expedited appeal process that:

- Allows for persons to request reconsideration of the bond set by the court at the same time that an appeal proceeds;
- Provides sole jurisdiction for all reconsideration motions with the district court for felony cases subsequent to the first mandatory reconsideration hearing;
- Allows for an audio of the bail hearing to be provided if a transcript cannot be obtained within 72 hours;
- Requires that a subsequent reconsideration motion be ruled upon within 14 days after the deadline for the district attorney to respond;
- The appellate court shall require expedited briefing;
- The appellate court has 14 days from the conclusion of the briefing to issue an order;
- The appellate court shall issue written findings stating the state and federal reasons for decisions and questions of law shall be reviewed de novo;
- The appeal process does not stay the underlying criminal proceedings.

**ELEMENT 3.12.**  
**Draft**  
**Statutory**  
**Language**

See statutory language §16-4-204 (Appendix F).

**ELEMENT 3.13      Create a telejustice program fund.**

It is essential for jurisdictions to use the best technology available to conduct bail hearing timely and efficiently. The County Courthouse and County Jail Funding and Overcrowding Solutions Interim Study Committee (July 17–October 23, 2017) recommended that a telejustice program be developed statewide and the program be funded through General Funds. That recommendation was included in House Bill 18-1131 (Court System for Remote Participation in Hearings), which did not pass the legislature.

The reengrossed version of House Bill 18-1131 properly balances the rights of the person in custody with the need for timely hearing and it enhances current practices and sets standards for best practices in telejustice. It is important that telejustice be used only when the appearance of the defendant will be delayed and the prompt administration of justice denied. However, the use of telejustice is important for the State of Colorado to develop.

**ELEMENT 3.13.**      See statutory language §13-3-117 (Appendix F).  
**Draft**  
**Statutory**  
**Language**

**ELEMENT 3.14      Increase the representation of the community on the pretrial community advisory boards.**

Membership on the community advisory boards pursuant to §16-4-106, C.R.S., must include, at a minimum, a representative of a local law enforcement agency, a representative of district attorneys, a representative of public defenders, a victim representative, and an individual who has been incarcerated in the judicial district or his/her immediate family member. The Chief Judge is encouraged to appoint to the Community Advisory Board at least one county commissioner from a county within the judicial district. The Community Advisory Board may be the same board that is organized to develop the administrative order as recommended in ELEMENT 3.7.

**ELEMENT 3.14.**      See statutory language §16-4-106 (Appendix F).  
**Draft**  
**Statutory**  
**Language**



## 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 47, 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<sup>7</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>8</sup>

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>9</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>10</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>11</sup>

7 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))

8 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))

9 See Footnote #2.

10 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))

11 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](http://uscourts.gov/federal-probation-journal/2009/09/pretrial-risk-assessment-federal-court))

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>12</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.

A report on promising practices in pretrial services<sup>13</sup> 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.

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12 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))

13 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](http://university.pretrial.org/viewdocument/promising-practices))

**Table 1. Colorado Counties With or Without Pretrial Services and/or Assessment (October 2017).**

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

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

**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.”<sup>14</sup>*

*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.*

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<sup>14</sup> Office of the Legislative Auditor General: State of Utah. (2017). *A Performance Audit of Utah’s Monetary Bail System* (Report #2017–01). (See [university.pretrial.org/viewdocument/a-performance-audit-of-utahs-moneta](http://university.pretrial.org/viewdocument/a-performance-audit-of-utahs-moneta))





## 5 Next Steps

### Task Forces and Committees

At the close of Fiscal Year 2020, the Age of Delinquency Task Force, the Drug Offense Task Force and the Opioid Investigations Subcommittee concluded their work.

The Commission prepared to establish a Sentencing Reform Task Force in response to the sentencing topics delineated in the 2020 Biennial letter from Governor Jared Polis pursuant to House Bill 2018-1287.

As this report goes to press, multiple recommendations are to be presented to the Commission by the Age of Delinquency Task Force, the Drug Offense Task Force, and the Opioid Investigations Subcommittee. These outcomes will be included in Fiscal Year 2021 Commission report.

### Summary

The Commission will continue to meet on the second Friday of the month, and information about the meetings, documents from those meetings, and information about the work of the task forces and committees can be found on the Commission's web site at [ccjj.colorado.gov](http://ccjj.colorado.gov). The Commission expects to present its next annual report in the fall of 2021.







**6**  
**Appendices**

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# Appendix A

## Policy Matters: Prison Population Projection Model

**POLICY MATTERS**

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**PRISON POPULATION PROJECTION MODEL**

LINDA HARRISON, SENIOR ANALYST  
KIM ENGLISH, RESEARCH DIRECTOR  
COLORADO DIVISION OF CRIMINAL JUSTICE  
AUGUST 9, 2019

PRESENTATION TO THE COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE

**DIVISION OF CRIMINAL JUSTICE  
DEPARTMENT OF PUBLIC SAFETY**

- C.R.S. 24-33.5-503. Duties of the Division.**
  - (a, b)....to collect and disseminate information concerning crime and criminal justice ...to enhance the quality of criminal justice at all levels of government...to analyze the state's activities in the administration of criminal justice and the nature of the problems confronting it and to make recommendations...for the improvement....
  - (m) To provide information to...legislative council concerning population Projection Model, research data, and other information relating to the projected long-range needs of correctional facilities and juvenile detention facilities...
- The Division prepares two forecasts per year.**
  - The first is generated each winter, utilizing offender-based data provided by the Department of Corrections. The second is prepared each summer, making adjustments to the prior forecast based on current patterns of admissions and discharges, policy changes, and new legislation passed in the prior legislative session.

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**OVERVIEW**

- Forecast methodology
- Current forecasts
- Questions

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**DCJ PRISON POPULATION FORECASTING MODEL**

Is comprised of 2 parts: 1) the intake component

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**DCJ PRISON POPULATION FORECASTING MODEL**

2) the stock population component

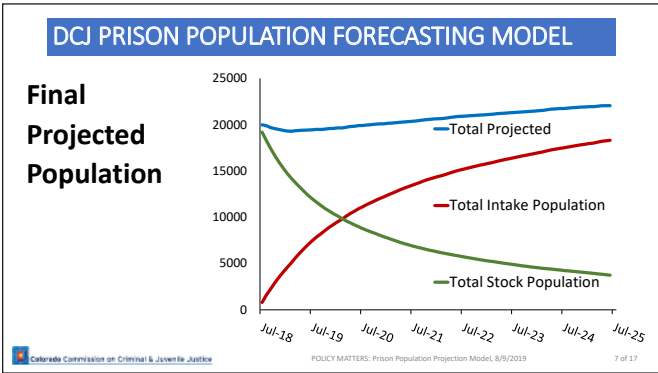
Colorado Commission on Criminal & Juvenile Justice | POLICY MATTERS: Prison Population Projection Model, 8/9/2019 | 5 of 17

**DCJ PRISON POPULATION FORECASTING MODEL**

Survival distributions:

- Are estimated based on prior releases.
- Used to estimate release dates.
- Which in turn gives the projected population remaining at the end of each month

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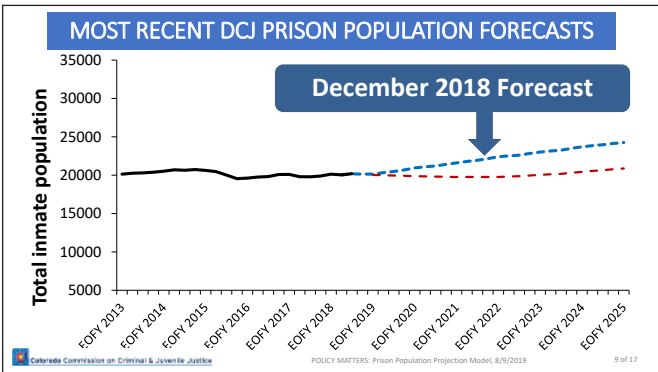


### DCJ PRISON POPULATION FORECASTING MODEL

**Prediction is very difficult, especially if it's about the future.**

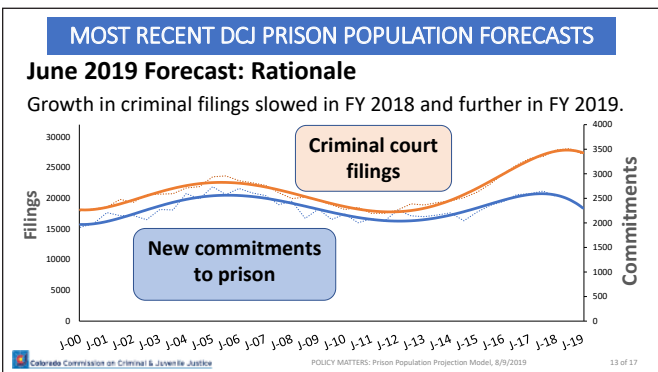
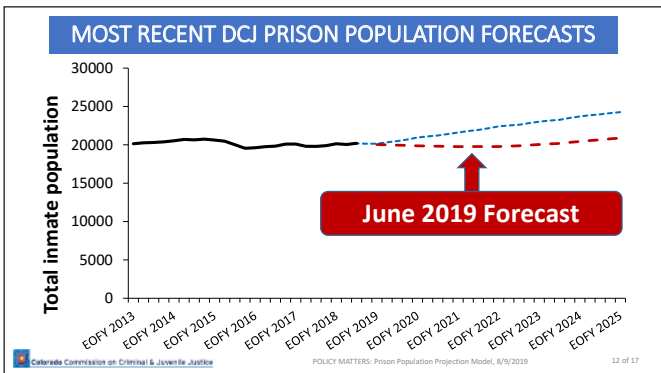
*Niels Bohr, physicist*

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- ### MOST RECENT DCJ PRISON POPULATION FORECASTS
- Drivers of DCJ December 2018 Forecast:**
- Over the prior 5 years, criminal court filings increased 43%.
  - Between FY 2016 and FY 2017, filings increased 12.5% each year
  - New sentences to prison increased 11.9% in FY 2017 and 9.2% in FY 2018, the largest degrees of growth observed in over a decade.
- Colorado Commission on Criminal & Juvenile Justice | POLICY MATTERS: Prison Population Projection Model, 8/9/2019 | 10 of 17

- ### MOST RECENT DCJ PRISON POPULATION FORECASTS
- Drivers of DCJ December 2018 Forecast:**
- Growth in the proportion of probation sentences ending in revocation...
  - ...With an increasing proportion of those revoked sentenced to prison.
  - Strong growth expected in the Colorado population, especially among those in the 24- to 44-year old age range.
- Colorado Commission on Criminal & Juvenile Justice | POLICY MATTERS: Prison Population Projection Model, 8/9/2019 | 11 of 17



- ### MOST RECENT DCJ PRISON POPULATION FORECASTS
- DCJ June 2019 Forecast: Rationale**
- Recent legislation:
- HB 19-1263 reclassifies several existing drug felonies as misdemeanors.
  - SB 19-143 will result in increases in parole releases and far fewer parole revocations.
- Colorado Commission on Criminal & Juvenile Justice | POLICY MATTERS: Prison Population Projection Model, 8/9/2019 | 14 of 17

**MOST RECENT DCJ PRISON POPULATION FORECASTS****DCJ June 2019 Forecast: Rationale**

- Prison admissions for technical parole violations have declined.
- Revocations during the most recent 3 months (March-May 2019) fell by 31.7% over the number observed during the same time frame in the previous year.
- Growth in new court commitments has slowed.

**MOST RECENT DCJ PRISON POPULATION FORECASTS****DCJ June 2019 Forecast: Rationale**

- Overall releases increased slightly in FY 2019.
- In particular, discretionary parole releases increased
- Growth is expected to return by the end of FY 2022, though at a slower rate than previously projected.



## Appendix B Community Reinvestment—Four Initiatives in Colorado



**Community Reinvestment**  
Four Initiatives in Colorado

Terri Hurst/Juston Cooper (CCJRC), Richard Morales (LCCL), Hassan Latif (SCC)  
Colorado Commission on Criminal & Juvenile Justice,  
September 13, 2019

1

### Community Reinvestment-Colorado

CCJRC has been involved in the legislative creation of four different Community Reinvestment Initiatives that are all currently active.

- Re-entry-WAGEES (2014) - DOC
- Crime Prevention: N Aurora & SE Colorado Springs – Transforming Safety (2017) - DOLA
- Victim Services (2018) - CDPHE
- Harm Reduction (2019) - CDPHE

2

### Community Reinvestment v. Justice Reinvestment

Justice Reinvestment (JRI), broadly defined

- CSG/Pew model - reinvestment has largely been back into criminal justice agencies for systems improvement efforts and direct services, especially in behavioral health treatment.

CCJRC designed our approach to “reinvestment”, called *Community Reinvestment*, to focus on community-based and community-led safety strategies that engages and resources communities most directly impacted by mass incarceration, over-policing and crime to play an intentional role in improving public safety.

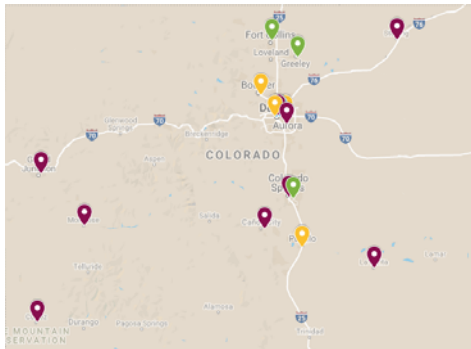
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### Community-Based Reentry Services

- Work and Gain Education and Employment Services (WAGEES) Program
- 18 programs throughout the state
- Provide services to people on parole, on transition in Community Corrections or up to one-year post-discharge from Department of Corrections.

4

### Community-Based Reentry (WAGEES)



5

### WAGEES sites – Contact Info

WAGEES Program	Address	Phone
Bridge House	4747 Table Mesa Dr., Boulder, 80305	303.575.4963
Christlife Ministries - Pueblo	2415 Lake Ave., Pueblo, 81004	719.647.9235
Christlife Ministries – CO Springs	1602 S. Wasatch Ave., 80905	719.219.6835
Colorado Springs Works	3750 Astrozon Blvd., 80910	719.354.6640
Homeward Alliance	242 Conifer St., Fort Collins, 80524	970.305.3861
Hope House	915 S. Division Ave., Sterling, 80751	970.380.7885
Life-line Colorado	1212 Mariposa St., Denver 80204	720.275.1739
Servicios de la Raza	3131 W 14th Ave., Denver, 80204	303.953.5909
Leaves & Fishes Ministries	241 Justice Center Dr., Canon City, 81212	719.275.0593
Junction Community Church – Grand Junction	2867 Orchard Ave., Grand Junction, 81501	970.778.5558
Junction Community Church – Montrose	147 E. Main St., Montrose, 81401	970.778.5558
Second Chance Center	9722 E 16th Ave., Aurora, 80010	303.909.0813
Ready to Work - Aurora	3176 S. Peoria Ct., Aurora, 80014	720.204.7076
The Rock Found	1542 7th Ave., Greeley, 80631	303.252.7453
Pinan Project (Family Resource Center)	210 E Main St., Cortez, 81321	970.739.7005
Southeast Health Group	6 counties in Southeast Colorado	719.383.5410
The Reentry Initiative	220 Collyer, Longmont 80501	303.772.5529 x233

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### Transforming Safety

- Pilot in N Aurora and SE Colorado Springs – direct services and small business lending as strategies for community development
- Grant Program Areas:
  - Academic Achievement, Community-Based Direct Services, Neighborhood Connections, and Increasing Safety & Usability of Common Outdoor Space
- Each Community came up with specific funding priorities by working with local Community Planning Teams
- 26 community organizations funded that provide a variety of services to justice involved people, crime survivors, and K-12 students

See You Tube Video: <https://www.youtube.com/watch?v=SBxiVNXH3ck&t=7shttps://transformingsafety.org>

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### Transforming Safety – Contact Info

North Aurora

N. Aurora Organizations *	Phone
Aurora Warms the Night	303.343.0537
CO African Organization	303.953.7060
Denver Works	303.433.0300
Families Forward Resource Center	303.307.0718
Restoration Project International	702.907.1774
Second Chance Center	303.537.5838
The Center for Trauma & Resilience	303.860.0660
Work Options for Women	720.944.1920
Caring & Sharing Community Resources & Transformation Center	720.365.6353
Collaborative Healing Initiative Within Communities	720.583.4951
Heavy Hands Heavy Hearts Foundation	720.296.9596
Street Fraternity	720.227.7317

\* Only some organizations are listed. A full list of grantees & programs can be found at: <https://transformingsafety.org/>

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### Transforming Safety – Contact Info

Southeast Colorado Springs

SE Colorado Springs	Phone
Colorado Springs Works	719.287.0831
Kingdom Builders Family Life Center	719.464.6676
Relevant Word Ministries	719.635.6640
Servicios de la Raza	303.458.5851
TESSA	719.633.3819
Thrive Network	719.884.6178
Vozas Unidas for Justice	720.588.8219
REACH Pikes Peak	719.358.8396
Second Chance Through Faith	719.313.9581
Solid Rock Community Development Corporation	719.393.7625
Weigh Out Ministries	719.930.0826

\* Only some organizations are listed. A full list of grantees & programs can be found at: <https://transformingsafety.org/>

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### Crime Survivors Services

- Focus on underserved victims, namely men, people of color, and young adults
- 3 community direct services grantees in first cycle
- Grant to Denver Health to do research on best practices on responding to repeat victimization and to organize a community convening specifically to bring together men to discuss men's victimization
- Survivors do not have to report the crime or participate in any prosecution to be eligible for services

See CCJRC report [Victims Speak](#)

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### Community Crime Victim Services – Contact Info

Organization	Address	Contact
<a href="#">Element of Discovery</a> <a href="#">Therapist of Color Collaborative</a>	2101 S. Blackhawk St., Ste. 240, Aurora, 80014	720-507-6706 303-881-1101
Colorado Culturally Based Care Initiative	1212 Mariposa St., Denver 80204	720-938-1381 310-947-4409
Kingdom Builders (focusing on military families experiencing family violence)	411 Lakewood Circle, Suite C-206-A&B Colorado Springs, CO 80910	719.464.6676

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### Role of Latino Coalition for Community Leadership

(grant intermediary)

- The Community Reinvestment initiatives are not a "traditional" government grant program but utilize a community-facing grant intermediary.
- LCCL role is very unique and essential –based on find, fund, form, feature approach
  - Manage the grant making process
  - Developed web-based infrastructure for grantees including integrated case management, data collection, and fiscal management functions
  - Provide grantees with on-going technical assistance to support capacity building
  - Monitor programs and quality assurance
- LCCL is the grant manager for both the WAGEES reentry grant program in partnership with DOC and the Victims Services grant program in partnership with CDPHE. In the Transforming Safety initiative, LCCL provides the technical assistance to grantees and data collection/evaluation.

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### Contact

Juston Cooper, CCJRC Deputy Director, [juston@ccjrc.org](mailto:juston@ccjrc.org)

Terri Hurst, CCJRC Policy Coordinator, [terri@ccjrc.org](mailto:terri@ccjrc.org)

Hassan Latif, SCC, Executive Director, [hassan@scccolorado.org](mailto:hassan@scccolorado.org)

Richard Morales, LCCL, Deputy Executive Director, [rpmorales@latinocoalition.org](mailto:rpmorales@latinocoalition.org)

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## Appendix C

# Desistance from Crime

### Desistance from Crime Empirical Evidence Implications for Policy and Practice

Colorado Commission on Criminal and Juvenile Justice  
September 13, 2019

Roger Przybylski  
Founder/Consultant, RKC Group  
Research Director, Justice Research  
and Statistics Association

- **Objective**
  - Raise awareness regarding the empirical evidence on desistance and its implications for policy and practice
- **What I will cover**
  - The concept of desistance and the manner in which desistance typically occurs
  - Research-based factors that facilitate desistance
  - Key implications for policy and practice

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#### What is Desistance?

- Desistance is the process of abstaining from crime among those who previously had engaged in a sustained pattern of offending
- Research on desistance provides a fundamentally different understanding of what works to reduce crime and victimization
- While desistance was originally viewed as a discrete state of non-offending, we now know that it is fairly unusual for individuals to “quit crime” in the same way they might resign from employment

#### Empirical Evidence on Desistance

- Desistance is a process, not an event
- Desistance is typically characterized by:
  - Ambivalence and vacillation
  - Progress and set-back
  - Hope and despair
- Hope and support play a key role in the desistance process

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#### Empirical Evidence on Desistance

- Identity transformation is a common dynamic among individuals who successfully desist
- Desistance requires:
  - Motivation
  - Acquisition of new skills (human capital),
  - Relationships that facilitate and help maintain change (social capital)
- Fallacy to view desistance as simply the product of intervention

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#### Understanding Desistance

- Primary desistance refers to a lull or crime-free gap in a criminal career
- Secondary desistance refers to a change in the way that an ex-offender sees him or herself
- Subcomponents of desistance
  - De-escalation
  - Deceleration
  - Reaching a ceiling
  - Specialization

### Understanding Desistance

- Multiple theories of desistance
- Developmental theories have the strongest empirical support
- Common themes across desistance theories
  - The prevalence of offending decreases with age
  - The incidence of offending does not necessarily decrease with age, because for some offenders it will increase
  - There is relative continuity within offending
  - Despite patterns of continuity in offending, most offenders do not become career criminals
  - There are multiple pathways out of crime

### What Helps Individuals Desist From Crime?

- Desistance is related to both external/social aspects of a person's life as well as to internal/psychological factors
- Informal social controls have a greater and more lasting impact than formal social controls
- **Getting older and maturing**
- **Employment**
- **Family and relationships**
- **Sobriety**

### Age and Crime

- Age has a direct effect on crime
- In Laub and Sampson's (2003) longitudinal study of criminal offenders past age 70, their major finding was that the number of offenses committed eventually decreased for **all** groups of offenders
- Both frequency of and participation in offending peaked in early adulthood and declined thereafter
- Street crime in particular is typically a pursuit of the young. For most types of street crime, offending rates peak in the late teens or early 20s, and then decline steadily before dropping off sharply around the age of 30

### Employment

- Offenders who find steady employment - particularly if it offers a sense of achievement and satisfaction - are more likely to desist from crime
- Some people, especially in areas of high economic disadvantage can desist without employment, but overall, employment is very important in helping to sustain desistance

### Family and Relationships

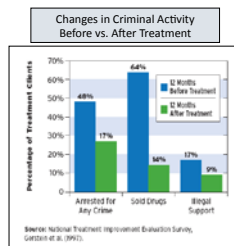
- Relationships matters
- Forming strong and supportive intimate bonds to others promotes desistance from crime
- **Having a place within a social group.** Those who feel connected to others in a (non-criminal) community of some sort are more likely to stay away from crime. Criminologists call this "social capital" – the amount of social support that someone has "in the bank" to draw upon

### Positive Relationships Between Offenders and Justice System Professionals Matter

- Research on "why people obey the law" suggests that people are most likely to be law abiding when they feel the law is fair and justly administered
- Punishments that are felt to be random, unjust or deliberately intended to demean can trigger defiance and a process of "rejecting one's rejectors"
- Desistance research has identified similar processes. Desisters who believe the criminal justice system helped them usually think this because of a particular staff member who made a difference, rather than because of any particular intervention

### Sobriety

- Drug and alcohol use are strongly associated with offending; therefore, recovery from addiction is a big part of desistance processes
- Treatment is effective, it reduces substance use and crime
- Must recognize that addiction is a chronic, often relapsing brain disease
- Like other chronic diseases, relapse is common; cannot view treatment as a one-time chance



### Treatment is Not a Slam Dunk

- Time in treatment matters
  - Program completion and longer retention times are associated with better outcomes
- Aftercare is important for long term results
  - Process for linking offenders with appropriate aftercare services is often not well defined
- NIDA's principles for treatment of criminal justice populations
  - Standardized assessment tools, tailored treatment plan, adequate duration, systems integration, drug testing and incentives, continuity of care

**Risk and Need as a Quadrant Model**  
(Marlowe, 2008)

		Prognostic Risk	
		High	Low
Criminogenic Need	High	Proximal Goals •Supervision •Treatment  Distal Goals •Pro-social habilitation •Adaptive habilitation	Proximal Goals •Treatment  Distal Goals •(Pro-social habilitation) •Adaptive habilitation
	Low	Proximal Goals •Supervision •Pro-social habilitation  Distal Goals •(Adaptive habilitation)	Proximal Goals •Secondary prevention •Diversion

**Criminogenic Needs**

**Substance Dependence or Addiction**

1. Binge pattern
2. Cravings or compulsions
3. Withdrawal symptoms

Abstinence is a distal goal

**Substance Abuse**

Abstinence is a proximal goal

**Collateral needs**

- Dual diagnosis
- Chronic medical condition (e.g., HIV+, HCV, diabetes)
- Homelessness, chronic unemployment

Regimen compliance is proximal

**National Research Council Report: Parole, Desistance from Crime, and Community Integration**

- Work, family ties, reduced consumption of drugs are important factors in desistance
  - People who desist are those who are better integrated into pro-social roles in family, workplace and community
- Time period immediately following release from prison is the riskiest
- Supervision alone does not reduce recidivism; supervision integrated with treatment does
- Sanctions alone have little impact

**Agency, Self-Determination**

- Maruna (2001) describes the prognosis for many persistent offenders as “dire” (precisely because of the criminogenic backgrounds, environments, and traits that they experience)
- Perhaps because of their experience of adversity, we know from research and practice experience that persistent offenders are very often highly fatalistic; or to use psychological terms, they have “low self-efficacy” and an “external locus of control”
- They don’t feel that they determine the direction of their own lives. Rather, life happens to them. Yet Maruna (2001) discovered that despite this background and previous outlook, desisters somehow manage to acquire a sense of “agency”— of control over their own lives

**Programs and Desistance**

- Many contemporary correctional interventions have a strong evidence base, and they can be seen as “assisting desistance” by helping to develop the internal mindsets that are important to desistance
- But desistance research also suggests that just delivering an evidence-based program won’t be enough without also paying attention to important external desistance factors
- Desistance is an inherently individualized process; hence, interventions need to be individualized
  - Interventions must work with offenders, not on them
  - The development and maintenance of motivation and hope are key practitioner tasks

**Involving Ex-offenders**

- Those on the journey to desistance need to hear from someone who has walked in their shoes
- Offenders who find ways to contribute to society, their community, or their families, are more successful at giving up crime
  - For instance, the opportunity to mentor, assist or enhance the life of other people
  - If these achievements are formally recognized, the effect may be even stronger

**Going Forward: What We Can Do**

- Give strong optimistic messages and avoid labelling
- Focus on strengths not just risks
- Make practical assistance the priority
- Work with parents and partners
- Recognize and mark achievements towards desistance
- Work with and support communities
- Work with, not on offenders

**Policy Implications**

- The evidence on desistance highlights the need for policymakers to alter current policies on incarceration and the collateral consequences of a felony conviction
- Social control and social capital are derived from some of the most basic institutions that imprisonment harms: the family, school, and job stability. Incarcerating high percentages of offenders already damages their weak bonds to society

### Policy Implications


- To surmount the negative effects of prison sentences, offenders should be able to continue their education while in prison and participate in occupational and vocational programs that could improve post-release job stability
- Specifically, programs need to effectively monitor the compliance of ex-prisoners and incorporate treatment focusing on job training and employment, education, family counseling, and reconnecting individuals to the community

### Policy Implications

- Invest in communities
  - Transforming Public Safety Model
- Invest in prevention

# Appendix D


## Summary: CY 2018 C.L.E.A.R. Act Report



**Summary:**  
**CY 2018 C.L.E.A.R. Act Report**

**Community Law Enforcement Action Reporting Act  
Pursuant to Senate Bill 2015-185**

Kim English, DCJ  
Colorado Commission on Criminal and Juvenile Justice  
October 11, 2019



**Colorado Commission on Criminal & Juvenile Justice**

**Background**


In 2015, the General Assembly passed Senate Bill 185, the **Community Law Enforcement Action Reporting Act** (C.L.E.A.R. Act) mandating that the Division of Criminal Justice (DCJ) analyze and report data annually from:

- law enforcement agencies
- the Judicial Department
- the adult Parole Board

**...to reflect decisions made at multiple points in the justice system process.**

The CLEAR Act requires that the data be analyzed by race/ethnicity and gender.

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**Colorado Commission on Criminal & Juvenile Justice**

**Criminal Justice Decision Points**

- **Arrest**
  - on view/probable cause
  - custody/warrant
  - summons
- Court filing
- Case outcome
- **Initial sentence**
- Revocation
- Parole

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**Colorado Commission on Criminal & Juvenile Justice**

**Race/ethnicity of Colorado population ages 10+, 2018**

Race/ethnicity	Adult %	Juvenile %
Black/African Am	4	5
Hispanic	19	31
Other	4	5
White	73	59
<b>Total</b>	<b>100</b>	<b>100</b>

Data Source: Colorado Department of Local Affairs, Office of the State Demographer.

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### Colorado Commission on Criminal & Juvenile Justice


#### Arrests/summons by race/ethnicity, 2018

Race/ethnicity	%
Black/African Am	12
Hispanic*	28
Other	2
White	58
<b>Total</b>	<b>100%</b>

Data source: Colorado Bureau of Investigation, National Incident Based Reporting System (NIBRS) data. Extracted 06/10/2019. \*Hispanic ethnicity was estimated using a DCJ-developed and validated statistical model.

CO Population		
Race/ethnicity	Adult %	Juv %
Black/African Am	4	5
Hispanic	19	31
Other	4	5
White	73	59

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### Colorado Commission on Criminal & Juvenile Justice


#### Court of case filing, by race/ethnicity

Court	Race/ethnicity	%	N
Adult District		45%	53,400
	Black/African Am	<b>11%</b>	<b>6,138</b>
	Hispanic*	30%	16,138
	Other	2%	1,322
County	White	56%	29,802
	Black/African Am	48%	57,726
	Hispanic*	8%	4,522
	Other	28%	16,275
Juvenile	Other	3%	1,838
	White	61%	35,091
	Black/African Am	<b>17%</b>	<b>1,337</b>
	Hispanic*	7%	8,047
Total	Hispanic*	35%	2,824
	Other	3%	264
	White	45%	3,622
		100%	119,173

CO Population		
Race/ethnicity	Adult %	Juv %
Black/African Am	4	5
Hispanic	19	31
Other	4	5
White	73	59

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CIASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals. Excludes Denver County Court cases. \*Hispanic ethnicity was estimated using a DCJ-developed and validated statistical model.

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### Colorado Commission on Criminal & Juvenile Justice

#### Preview of upcoming slides

#### Initial Sentence by race/ethnicity

Initial Sentence	Black/African Am		Hispanic		Other		White	
	%	N	%	N	%	N	%	N
Community Corrections								
Community Service								
Credit for Time Served								
<b>Deferred Judgment</b>								
<b>Dept of Corrections</b>								
Division of Youth Corrections								
Fines								
<b>Jail</b>								
Probation/Intensive Supervision								
Unsupervised Probation								
Youthful Offender System								
<b>Total</b>								

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### Colorado Commission on Criminal & Juvenile Justice

#### Initial Sentence in County Court, by race/ethnicity

Sentence	Black/African Am	Hispanic*	Other	White	Total
(N=)	2,252	9,687	911	20,134	32,984
Community Corrections	0%	<1%	0%	<1%	<1%
Community Service	3%	5%	4%	4%	4%
<b>Deferred</b>	<b>18%</b>	<b>17%</b>	<b>31%</b>	<b>23%</b>	<b>21%</b>
Division of Youth Services	0%	<1%	0%	0%	<1%
Fines/fees	15%	15%	12%	16%	16%
<b>Jail</b>	<b>31%</b>	<b>25%</b>	<b>23%</b>	<b>23%</b>	<b>24%</b>
Probation/Intensive Supervision	27%	31%	24%	27%	28%
Unsupervised Probation	5%	6%	7%	6%	6%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CIASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals. Excludes Denver County Court cases. \*Hispanic ethnicity was estimated using a DCJ-developed and validated statistical model.

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### Colorado Commission on Criminal & Juvenile Justice

#### Initial Sentence in District Court, by race/ethnicity

Sentence	Black/African Am	Hispanic*	Other	White	Total
(N=)	4,457	12,131	927	23,257	40,772
Community Corrections	5%	6%	3%	6%	6%
Community Service	<1%	<1%	<1%	<1%	<1%
<b>Deferred</b>	<b>8%</b>	<b>7%</b>	<b>13%</b>	<b>9%</b>	<b>9%</b>
<b>Dept of Corrections</b>	<b>24%</b>	<b>21%</b>	<b>15%</b>	<b>17%</b>	<b>19%</b>
Division of Youth Services	<1%	0%	0%	0%	<1%
Fines/fees	1%	1%	1%	1%	1%
Jail	11%	12%	8%	10%	11%
Probation/Intensive Supervision	51%	52%	59%	56%	54%
Youthful Offender System	<1%	<1%	0%	<1%	<1%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CIASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals. Excludes Denver County Court cases. \*Hispanic ethnicity was estimated using a DCJ-developed and validated statistical model.

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### Colorado Commission on Criminal & Juvenile Justice

#### Initial Sentence in Juvenile Court, by race/ethnicity

Sentence	Black/African Am	Hispanic*	Other	White	Total
(N=)	807	1,821	154	2,317	5,099
Community Corrections	0%	0%	0%	<1%	<1%
Community Service	0%	<1%	0%	<1%	<1%
<b>Deferred</b>	<b>23%</b>	<b>34%</b>	<b>45%</b>	<b>44%</b>	<b>37%</b>
<b>Division of Youth Services</b>	<b>19%</b>	<b>11%</b>	<b>7%</b>	<b>8%</b>	<b>11%</b>
Fines/fees	3%	2%	3%	3%	2%
Jail	3%	2%	1%	1%	2%
Juvenile Detention	2%	1%	1%	2%	1%
Probation/Intensive Supervision	50%	49%	42%	43%	46%
Youthful Offender System	0%	<1%	0%	0%	<1%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CIASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals. Excludes Denver County Court cases. \*Hispanic ethnicity was estimated using a DCJ-developed and validated statistical model.

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**Colorado Commission on Criminal & Juvenile Justice**

Initial Sentence in Juvenile Court, VIOLENT offenses, by race/ethnicity

Sentence	Black/ African Am	Hispanic*	Other	White	Total
(N=)	298	662	54	758	1,772
Community Service	0%	0%	0%	<1%	<1%
<b>Deferred</b>	<b>23%</b>	<b>36%</b>	<b>44%</b>	<b>44%</b>	<b>38%</b>
<b>Division of Youth Services</b>	<b>23%</b>	<b>11%</b>	<b>11%</b>	<b>7%</b>	<b>11%</b>
Fines/fees	2%	2%	0%	2%	2%
Jail	2%	1%	0%	1%	1%
Juvenile Detention	2%	1%	4%	2%	1%
Probation/Intensive Supervision	48%	50%	41%	45%	47%
Youthful Offender System	0%	<1%	0%	0%	<1%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CIASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals. Excludes Denver County Court cases. \*Hispanic ethnicity was estimated using a DCJ-developed and validated statistical model.

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**Colorado Commission on Criminal & Juvenile Justice**

**In 2018, statewide:**

Black/African Americans represented 4% of the adult state population and accounted for...

- 12% of arrests
- 11% of adult district court filings

Hispanic adults represented 28% of the population and accounted for...

- 28% of arrests
- 30% of adult district court filings

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**Colorado Commission on Criminal & Juvenile Justice**

**2018 Statewide Summary**

- Black/African Americans more likely to be arrested
- Black/African Americans less likely to get deferred judgments
- Black/African Americans more likely to receive sentence to confinement

**But many factors can influence a sentencing decision**

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**Colorado Commission on Criminal & Juvenile Justice**

Statistically controlled for:

- Prior cases
- Prior convictions for a specific violent crime (see footnote),
- Other concurrent cases
- Felony conviction level
- Instant offense type (drug, property, other, violent)
- Whether the instant offense was a specific violent crime

The violent crimes included in this analysis are as follows: C.R.S. 18-3-102, 1st degree homicide; 18-3-103, 2nd degree homicide; 18-3-202, 1st degree assault; 18-3-203, 2nd degree assault; 18-3-301, 1st degree kidnapping; 18-3-302, 2nd degree kidnapping; 18-3-402, sex assault (felony); 18-3-404, unlawful sexual contact (felony); 18-3-405, sex assault on a child; 18-3-405.3, sex assault on a child position of trust; 18-4-302, aggravated robbery; 18-4-102, 1st degree arson; 18-3.5-103, 1st degree unlawful termination of pregnancy; 18-3.5-104, 2nd degree unlawful termination of a pregnancy.

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**Colorado Commission on Criminal & Juvenile Justice**

*After controlling for the factors just described....*

1. Compared to Whites, are Black/African Americans (or Hispanics) more or less likely to receive a sentence to the Department of Corrections for felony convictions in district court?
2. Compared to Whites, are Black/African Americans (or Hispanics) more or less likely to receive a deferred judgment for convictions in district court?
3. Compared to Whites, are Black/African American (or Hispanic) juveniles more or less likely to receive a deferred judgment for convictions in juvenile court?
4. Compared to Whites, are Black/African American (or Hispanic) juveniles more or less likely to receive a sentence to DYS?

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**Colorado Commission on Criminal & Juvenile Justice**


**2018 Summary**

Jurisdiction	Hispanic Adults DOC	Black/African Am Adults DOC	Hispanic Adults NO Def J	Black/African Am Adults NO Def J	Hispanic Juveniles NO Def J	Black/African Am Juveniles NO Def J	Hispanic Juveniles DYS	Black/African American Juveniles DYS
Statewide	X	X	X	X	X	X	X	
1 <sup>st</sup> JD	X	X		X	X	X	X	X
2 <sup>nd</sup> JD		X	X	X	X	X	X	X
4 <sup>th</sup> JD	X	X			X	X*	X	X
18 <sup>th</sup> JD	X	X	X	X	X	X	X	X

X means that, compared to Whites, the group had a greater/lesser likelihood of receiving that sentence.

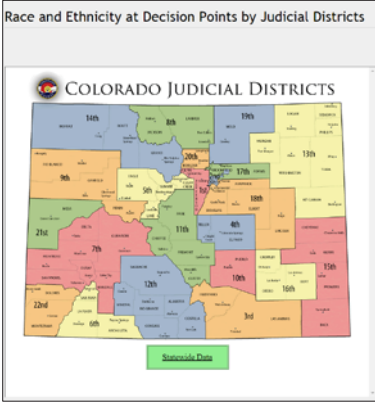
\*The difference was very small.

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**Colorado Commission on Criminal & Juvenile Justice**

Race and Ethnicity at Decision Points by Judicial Districts



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**Colorado Commission on Criminal & Juvenile Justice**

From the Brennan Center for Justice  
**Reducing racial/ethnic disparities in jails (2015)**  
Roundtable participants included Former Commissioner Raemisch

**Officials in local jurisdictions can create a cross-agency Task Force to reduce racial disparities**

1. Identify drivers; pinpoint where disparities are most pervasive.
2. Specify goals and measures of success for the jurisdiction.
3. Require training for all system actors to overcome implicit racial bias; for anyone who exercises discretion.
4. Encourage prosecutors to prioritize serious and violent offenses; don't conflate "success" with number of prosecutions or convictions.
5. Increase indigent representation in misdemeanor cases when jail time is an available punishment.
6. Provide "bench cards" to judges to combat implicit bias and unnecessary use of jail.

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**Colorado Commission on Criminal & Juvenile Justice**

From the Brennan Center for Justice  
**Reducing racial/ethnic disparities in jails (2015)**

1. **Focus on low level offenses**
  - Once stopped, Black/African Americans more likely to be arrested
  - 2014 study by National Bureau of Economic Research found charges more likely to be filed following arrest compared to previous decades
  - **Expand pre-arrest diversion programs**
  - **Expand pre-charge and pretrial diversion programs**

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**Colorado Commission on Criminal & Juvenile Justice**

From the Brennan Center for Justice  
**Reducing racial/ethnic disparities in jails (2015)**

2. **Focus on unnecessary use of pretrial detention**
  - Research shows length of pretrial detention is linked to longer post-sentence confinement in jail and prison
  - Blacks more likely to be confined pre-trial
  - Leads to loss of job, housing, healthcare
  - **Use risk assessment tools**
  - **Expand pretrial services programs**
  - **Divert low-level offenders**
  - **Eliminate money-based pretrial systems**

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**Colorado Commission on Criminal & Juvenile Justice**

From the Brennan Center for Justice  
**Reducing racial/ethnic disparities in jails (2015)**

3. **Consider the aggressive collection of criminal justice debt**
  - Racial disparities are reinforced by socioeconomic inequality
  - **Assess individuals' abilities to pay**
4. **Everyone who exercises discretion: Undergo training to identify and confront implicit racial/ethnic bias**

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**Colorado Commission on Criminal & Juvenile Justice**

From the President's Task Force on 21<sup>st</sup> Century Policing

**Law enforcement agencies should...**

- Embrace a guardian mindset, promoting the dignity of all individuals and protecting everyone's Constitutional rights (Procedural Justice)
- Consider the collateral damage of any given safety strategy on public trust
- Strive to create a diverse workforce
- Infuse community policing and problem solving principles throughout the organizational structure
- Work with schools to develop alternatives to suspension/expulsion
- Ensure training occurs throughout an officer's career with procedural justice at the center/lessons to improve social interactions/lessons on addiction/lessons on recognizing and confronting implicit bias

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## Appendix E

### Biennial Letter from Governor Jared Polis

JARED POLIS  
GOVERNOR



136 STATE CAPITOL  
DENVER, COLORADO 80203

TEL 303-866-2471  
FAX 303-866-2003

June 24, 2020

Stan Hilkey, Chair  
Colorado Commission on Criminal and Juvenile Justice  
700 Kipling Street, Suite 1000  
Lakewood, CO 80215

Dear Chair Hilkey,

Thank you and the entire Colorado Commission on Criminal and Juvenile Justice (CCJJ or Commission) for your service and commitment to promoting better outcomes in our justice system. After consulting key stakeholders, community members, and legislative leadership, including the Chief Justice of the Colorado Supreme Court and the majority and minority leaders of the House of Representatives and the Senate, we are transmitting this letter to you with suggested topics for the Commission to study in response to your request, per C.R.S. § 16-11.3-103(7).

The last several months have only further underscored the existing inequities and disparities that exist in our country and our state. Many are protesting right now, seeking justice and changes to our law enforcement, criminal, and juvenile justice systems. As Governor, I am focused on building a better Colorado for all. That means promoting public safety, reducing crime, and treating every individual with fairness and equity. Together, the Commission, community, and General Assembly have made great strides to promote these goals. However, it is time we tackle one of the most difficult issues affecting both adults and juveniles in the justice system, especially for people of color: sentencing recalibration.

Our sentencing scheme should be rational, just, and consistent so that the punishment fits the conduct. Sentences should be grounded in anti-bias principles and equity, regardless of race, ethnicity, gender, geography, socio-economic status, disability, or any of the other intersecting identities that may affect sentencing. Laws regarding supervision, detention, and incarceration should reflect our values of rehabilitation and public safety, rather than reflecting the inherent systemic biases in our justice system toward behavioral health conditions, poverty, inequity, or racial-bias. Lastly, incarceration and detention should be reserved for the most serious cases, and rehabilitation should be our goal in every case.

Many values should factor into sentencing decisions, including:

1. Maximizing community safety without excessive supervision or incarceration;
2. Providing restoration and healing for victims;
3. Ensuring fair and consistent treatment;
4. Eliminating unjustified disparity in sentences;
5. Providing effective deterrents to committing crimes;
6. Promoting rehabilitation, especially in community settings;
7. Addressing individual characteristics in an unbiased manner and reducing recidivism; and

8. Promoting acceptance of responsibility and accountability.

To achieve more effective sentencing across our justice system, the Commission should revisit its work creating sentencing grids, and apply this methodology to the entire criminal codes. We recognize that recalibrating sentencing is no easy task -- if it were, it would have already been completed. However, we are confident that the Commission possesses the expertise needed from the justice system, including district attorneys, defense attorneys, the judiciary, law enforcement, victim advocacy, and reform communities, as well as the academic rigor and thoughtful consideration needed for such a task. The Commission should ensure that victims are heard and respected and that offenders' sentences are not excessively punitive. The Commission should also build upon the work of the General Assembly to ensure that, wherever feasible, evidence-based strategies such as restorative justice are utilized.

We encourage the Commission to study, discuss, and return recommendations to the Governor on the following topics, deploying evidence-based practices when possible:

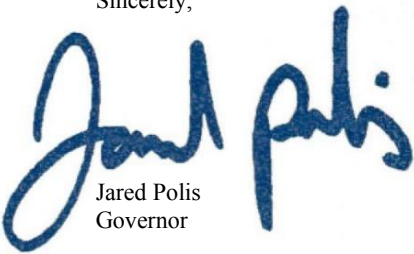
1. Analyzing prison population trends, and continually reviewing the implications of any changes in sentencing on the length of those incarcerated in the Department of Corrections (DOC). The Commission should recognize the finite resource of available beds in DOC, as well as the administration's effort to eliminate private prison capacity.
2. Developing a guideline approach to structuring dispositions.
3. Defining the purpose of probation, so that the terms and consequences of violations support best practices.
4. Ensuring statewide consistency in the application of sentencing guidelines that mitigate the effects of individual discretion by system actors.
5. Determining the appropriate degree of determinacy and where to strike a balance between "truth in sentencing" and ensuring that there are incentives for success throughout an offender's sentence. This includes reviewing:
  - a. The necessity of the extraordinary risk section in C.R.S. 18-1.3-401(10), to simplify the sentencing code while at the same time providing the prosecution with more discretion in charging and negotiations.
  - b. Habitual criminal provisions of C.R.S. 18-1.3-801 so that we are enhancing sentences for only those individuals who are truly public safety risks.
6. Optimizing how community resources are allocated to better align interventions that are more likely to reduce recidivism and provide meaningful sentencing choices.
7. Improving the interactions between those with behavioral health conditions (including individuals with intellectual and developmental disabilities, traumatic brain injuries, and dementia) and first responders, law enforcement, and healthcare workers, so that those with behavioral health conditions are not unnecessarily involved in the justice system due to unmet health needs.

The Commission should ensure that the workgroups it creates represent the people of Colorado and the communities the justice systems serve. It should leverage the membership of the Commission, as well as other justice system decision-makers that bring practical experience from their work adjudicating criminal cases. I encourage the Commission to be aggressive and flexible with their meetings and process so that we quickly, but thoughtfully, move recommendations. We

request that the Commission provide an update on their progress at the Department's SMART Act hearing during the winter, and encourage the recommendations to be completed so they may be enacted into law by the General Assembly during its 2021 legislative session. Finally, we hope that the Commission after completing this work for adults can then apply these same values and principles to the creation of sentencing guidelines for juveniles.

We hope that you will take up these suggestions this summer and fall, and complete this very important task. Together, we can continue to advance efficient and effective policies that improve outcomes, change lives, and make our communities across Colorado safer for all.

Sincerely,

A handwritten signature in blue ink that reads "Jared Polis". The signature is stylized and cursive.

Jared Polis  
Governor



## Appendix F

# Statutory Language for Pretrial Release Recommendation: FY20-PR03

[As Approved]

### PRETRIAL RELEASE TASK FORCE

#### RECOMMENDATION FY20-PR #03: APPENDIX - Draft Statutory Language

PRESENTED TO THE COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE

January 10, 2020

## APPENDIX

### FY20-PR #03: Draft Statutory Language

*The draft statutory language below reflects the content and concepts included in the Commission recommendations above. No attempt has been made to adhere to proper bill draft format. For example, the text below does not integrate existing statutory language that has been identified for deletion that in proper bill format would be displayed using strikethroughs.*

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

- (1) ANY PERSON WHO IS ARRESTED AND HAS NOT BEEN RELEASED PURSUANT TO SECTION 16-4-103 HAS THE RIGHT TO A HEARING TO DETERMINE THE TYPE OF BOND AND CONDITIONS OF RELEASE. THE COURT SHALL REQUIRE THE APPROPRIATE LAW ENFORCEMENT AGENCY HAVING CUSTODY OF THE ARRESTED PERSON TO BRING HIM OR HER BEFORE THE COURT FORTHWITH, AND THE COURT SHALL SET THE TYPE OF BOND AND CONDITIONS OF RELEASE IF THE OFFENSE FOR WHICH THE PERSON WAS ARRESTED IS BAILABLE. IT SHALL NOT BE A PREREQUISITE TO THE COURT SETTING THE TYPE OF BAIL AND CONDITIONS OF RELEASE THAT A CRIMINAL CHARGE OF ANY KIND HAS BEEN FILED.

#### **16-4-103. Pretrial assessment process – Development of criteria by each judicial district – Risk assessment and release program.**

- (1) IN ORDER TO AVOID UNNECESSARY INCARCERATION AND DELAY IN RELEASING ARRESTED PERSONS, ON OR BEFORE MARCH 1, 2021, EACH JUDICIAL DISTRICT SHALL DEVELOP FOR IMPLEMENTATION BY APRIL 1, 2021:
- (a) A PRETRIAL RELEASE ASSESSMENT PROCESS TO ASSESS ARRESTED PERSONS AS SOON AS PRACTICABLE BUT NO LATER THAN TWENTY-FOUR HOURS AFTER ADMISSION TO A DETENTION FACILITY;
  - (b) AN ADMINISTRATIVE ORDER OF THE CHIEF JUDGE OF THE JUDICIAL DISTRICT SPECIFYING WRITTEN CRITERIA ALLOWING FOR THE IMMEDIATE PRETRIAL RELEASE OF CERTAIN ARRESTED PERSONS ON A SUMMONS OR AN UNSECURED PERSONAL RECOGNIZANCE BOND WITHOUT ANY MONETARY CONDITION AFTER A PRETRIAL RELEASE ASSESSMENT IS COMPLETED AND WITHOUT AN INITIAL HEARING BEFORE THE COURT. THE CRITERIA FOR RELEASE MUST BE DEVELOPED IN CONJUNCTION WITH ALL LOCAL STAKEHOLDERS, WHICH SHALL INCLUDE, AT A MINIMUM, A VICTIM'S ADVOCATE, AND A REPRESENTATIVE OF: THE DISTRICT ATTORNEY'S OFFICE, THE PUBLIC DEFENDER, A SHERIFF'S DEPARTMENT WITHIN THE JUDICIAL DISTRICT, THE PRETRIAL SERVICES PROGRAM, AND THE OFFICE OF THE STATE COURT ADMINISTRATOR. EACH JUDICIAL DISTRICT SHALL ALSO, IN THE DEVELOPMENT OF THE WRITTEN CRITERIA, SOLICIT, OBTAIN AND CONSIDER THE INPUT OF AT LEAST ONE INDIVIDUAL, OR THE FAMILY MEMBER OF ONE INDIVIDUAL, WHO HAS BEEN INCARCERATED IN THE JUDICIAL DISTRICT BECAUSE OF AN INABILITY TO PAY A MONETARY CONDITION OF BOND.
  - (c) THE WRITTEN CRITERIA SHALL BE IMPLEMENTED THROUGH THE ADMINISTRATIVE ORDER AND SHALL BE OBJECTIVE AND GUIDED BY THE PRINCIPLES OF RELEASE AS OUTLINED IN 16-4-104 AND SHALL ADOPT THE BEST PRACTICES STANDARDS AS DEVELOPED BY THE DEPARTMENT OF

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**PRETRIAL RELEASE TASK FORCE**

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PUBLIC SAFETY PURSUANT TO THE PROVISIONS OF 16-4-103.5. EACH JUDICIAL DISTRICT SHALL CONSIDER THE PRACTICES IN OTHER SIMILARLY SITUATED JUDICIAL DISTRICTS THROUGHOUT THE STATE TO PROMOTE STATEWIDE CONSISTENCY IN IMPLEMENTATION, WITH DEVIATION FROM CORE PRACTICES ONLY TO THE EXTENT THAT IS NECESSARY TO ADDRESS SPECIFIC ISSUES THAT EXIST WITHIN THAT JUDICIAL DISTRICT.

- (2) IN THE ADMINISTRATIVE ORDER CREATED PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION, THE CHIEF JUDGE OF THE JUDICIAL DISTRICT SHALL DESIGNATE A PERSON, AGENCY, OR PROGRAM FOR EACH DETENTION FACILITY WITHIN THE JUDICIAL DISTRICT TO CONDUCT THE PRETRIAL RELEASE ASSESSMENT. THE CHIEF JUDGE SHALL ALSO DESIGNATE A PERSON, AGENCY, OR PROGRAM AS A BONDING AND RELEASE COMMISSIONER, AS DEFINED IN THIS SECTION, WHO IS AUTHORIZED TO RELEASE PERSONS ELIGIBLE FOR IMMEDIATE RELEASE PURSUANT TO THE WRITTEN CRITERIA WITHOUT ANY MONETARY CONDITION OF RELEASE AND PRIOR TO ANY COURT APPEARANCE.
- (3) THE PRETRIAL RELEASE ASSESSMENT SHALL BE COMPLETED BY A PRETRIAL SERVICES AGENCY OR PROGRAM, OR OTHER COUNTY EMPLOYEE OR GOVERNMENTAL CONTRACT OFFICIAL AND NOT BY ANY FOR- PROFIT OR NON-PROFIT ENTITY.
- (4) ALL RELEASES ON PERSONAL RECOGNIZANCE BONDS PURSUANT TO THIS SECTION MUST INCLUDE THE STATUTORILY MANDATED CONDITIONS PURSUANT TO SECTION 16-4-105 AND MAY INCLUDE OTHER LEAST RESTRICTIVE AND NECESSARY NONMONETARY CONDITIONS AS DETERMINED BY THE PRETRIAL ASSESSMENT PROCESS AND THE WRITTEN RELEASE CRITERIA. ALL NONMONETARY CONDITIONS SHALL BE REASONABLE AND FOR THE PURPOSE OF ENSURING: THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY; THAT THE PERSON WILL NOT ATTEMPT TO FLEE PROSECUTION; AND THAT THE PERSON WILL NOT ATTEMPT TO OBSTRUCT OR OTHERWISE WILLFULLY AVOID THE CRIMINAL JUSTICE PROCESS. CONDITIONS OF RELEASE SHALL BE SUBJECT TO THE LIMITATIONS OF 16-4-105 REGARDING PERMISSIBLE FORMS OF SUPERVISION AND MONITORING OF ANY PERSON ON PRETRIAL RELEASE.
- (5) COUNTY SHERIFF'S OFFICES AND ANY OTHER DETENTION FACILITY INTAKE PERSONNEL ARE ENCOURAGED, TO THE EXTENT PRACTICABLE, TO DELAY THE ADMISSION OF ANY PERSON INTO THE GENERAL POPULATION OF ANY DETENTION FACILITY UNTIL AFTER THE COMPLETION OF THE PRETRIAL RELEASE ASSESSMENT TO AVOID UNNECESSARY DELAYS IN THE RELEASE OF ANY PERSONS ELIGIBLE TO BE RELEASED PURSUANT TO THIS SECTION, AND THE NEGATIVE CONSEQUENCES OF UNNECESSARY INCARCERATION.
- (6) THIS SECTION DOES NOT PROHIBIT THE RELEASE OF A DEFENDANT PURSUANT TO LOCAL PRETRIAL RELEASE POLICIES THAT REQUIRE PAYMENT OF A MONETARY CONDITION OF RELEASE PRIOR TO AN INDIVIDUALIZED DECISION BY A JUDGE, A PRETRIAL OFFICER, A BONDING AND RELEASE COMMISSIONER OR ANY OTHER JUDICIAL OFFICER.
- (7) THIS SECTION DOES NOT CHANGE THE MANDATORY REQUIREMENTS OF SECTION 18-1-1001(5) REGARDING THE ISSUANCE OF PROTECTION ORDERS.
- (8) LOCAL LAW ENFORCEMENT AGENCIES SHALL BE PROVIDED WITH THE ADMINISTRATIVE ORDER FOR THE JUDICIAL DISTRICT THEY SERVE SO THAT THE MANDATORY USE OF SUMMONS AS WELL AS THE DISCRETIONARY ARREST CRITERIA CAN BE FOLLOWED BY LAW ENFORCEMENT WITH RESPECT TO



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ANY PERSON AND TO ENSURE THAT LAW ENFORCEMENT AGENCIES CAN PROPERLY ADVISE ANY VICTIM OR MEMBER OF THE PUBLIC.

- (9) AS USED IN THIS ARTICLE 4, "BONDING AND RELEASE COMMISSIONER" MEANS A PERSON EMPLOYED BY A PRETRIAL SERVICES PROGRAM AS DESCRIBED IN SECTION 16-4-106, OR ANY OTHER PERSON OR PROGRAM 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.

**16-4-103.5. Duties of the Department of Public Safety - Development of best practice standards for pretrial release – Inventory and approval of pretrial assessment instruments - Measurement of risk factors and bias evaluation and monitoring.**

- (1) BY DECEMBER 1, 2020, THE DEPARTMENT OF PUBLIC SAFETY, DIVISION OF CRIMINAL JUSTICE, SHALL BE RESPONSIBLE FOR DEVELOPING STATEWIDE STANDARDS AND GUIDELINES FOR THE DEVELOPMENT OF BOTH THE PRETRIAL RELEASE ASSESSMENT PROCESS, THE WRITTEN CRITERIA FOR IMMEDIATE PRETRIAL RELEASE AS REQUIRED BY 16-4-103, AND STANDARDS FOR THE SETTING OF THE TYPE OF BOND AND CONDITIONS OF RELEASE. THE STANDARDS AND GUIDELINES SHALL BE DEVELOPED IN CONJUNCTION WITH A REVIEW OF THE RELEVANT RESEARCH AND BEST PRACTICES THROUGHOUT THE COUNTRY, WHICH SHALL INCLUDE, BUT IS NOT LIMITED TO:
- (a) STUDIES RELATED TO THE IMPACT OF PRETRIAL DETENTION ON LOW-RISK PERSONS AND RECIDIVISM;
  - (b) THE NATIONAL AND STATE DATA AND RESEARCH REGARDING THE USE OF MONETARY AND NONMONETARY CONDITIONS OF BOND AS THEY RELATE TO REASONABLY ENSURING THE SAFETY OF ANY PERSON OR THE COMMUNITY AND COURT APPEARANCE RATES; AND
  - (c) THE RELEVANT CASE LAW.
- (2) THE DEVELOPMENT OF THE STANDARDS AND GUIDELINES BY THE DEPARTMENT SHALL ALSO INCLUDE CONSULTATION WITH REPRESENTATIVES OF INTERESTED STAKEHOLDERS WHICH SHALL INCLUDE, AT A MINIMUM:
- (a) A PRETRIAL SERVICE AGENCY OR PROGRAM,
  - (b) THE OFFICE OF THE STATE COURT ADMINISTRATOR,
  - (c) THE PUBLIC DEFENDER'S OFFICE,
  - (d) THE DISTRICT ATTORNEYS COUNCIL,
  - (e) A LOCAL LAW ENFORCEMENT DEPARTMENT OR OFFICE,
  - (f) A VICTIM SERVICES AGENCY OR PROGRAM,
  - (g) A NON-GOVERNMENTAL ORGANIZATION WITH EXPERTISE IN PRETRIAL JUSTICE AND
  - (h) A PERSON WITH LIVED EXPERIENCE IN THE CRIMINAL JUSTICE SYSTEM.
- (3) AS SOON AS PRACTICABLE BUT NO LATER THAN DECEMBER 1, 2020, THE DEPARTMENT OF PUBLIC SAFETY, DIVISION OF CRIMINAL JUSTICE, SHALL COMPILE AN INVENTORY OF APPROVED PRETRIAL

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RISK ASSESSMENT INSTRUMENTS AVAILABLE FOR USE IN COLORADO. ANY INSTRUMENT APPROVED AND AUTHORIZED MUST BE EMPIRICALLY DEVELOPED AND VALIDATED.

- (4) ANY PRETRIAL RISK ASSESSMENT INSTRUMENT APPROVED FOR USE SHALL BE VALIDATED IN COLORADO WITHIN THREE YEARS OF USE TO MAXIMIZE ACCURACY AND TO STATISTICALLY MINIMIZE BIAS ON THE BASIS OF RACE, ETHNICITY AND GENDER.
- (5) ANY OTHER INSTRUMENTS USED IN THE PRETRIAL DECISION-MAKING PROCESS SHOULD BE RESEARCH BASED AND DATA SHALL BE COLLECTED BY THE JURISDICTIONS TO STUDY AND STATISTICALLY MINIMIZE BIAS ON THE BASIS OF RACE, ETHNICITY AND GENDER.
- (6) BY OCTOBER 1, 2022 AND EVERY OCTOBER 1 THEREAFTER, THE OUTCOMES OF THE BOND SETTING PROCESS, INCLUDING THE TYPE OF BOND SET, THE AMOUNT OF ANY SECURED OR UNSECURED MONETARY CONDITION OF BOND, AND ANY OTHER CONDITIONS OF RELEASE, IF AVAILABLE, MUST BE EVALUATED FOR BIAS ON THE BASIS OF RACE, ETHNICITY AND GENDER BY JUDICIAL DISTRICT.
- (7) ANY EVALUATIONS AND REPORTS FOR BIAS BASED ON RACE, ETHNICITY AND GENDER MUST BE CONDUCTED BY THE DEPARTMENT OF PUBLIC SAFETY, DIVISION OF CRIMINAL JUSTICE, AND THE DIVISION SHALL DEVELOP A DATA COLLECTION PROCESS FOR ALL JUDICIAL DISTRICTS IN ORDER TO OBTAIN THE NECESSARY DATA TO CONDUCT THE EVALUATION.
- (8) ANY APPROVED RISK ASSESSMENT INSTRUMENT, AS WELL AS THE OUTCOMES OF THE BOND SETTING PROCESS, MUST BE RE-EVALUATED PURSUANT TO SUBSECTIONS (3) AND (4) ABOVE AT LEAST ONCE EVERY THREE YEARS. THESE EVALUATIONS SHALL, AT A MINIMUM, CONSIDER RELEASE RATES, RELEASE CONDITIONS, IF AVAILABLE, TECHNICAL VIOLATIONS OR REVOCATIONS, AND PERFORMANCE BY RACE, ETHNICITY AND GENDER TO MONITOR DISPARATE IMPACT.
- (9) THE DEPARTMENT OF PUBLIC SAFETY SHALL PRESENT THE FINDINGS OF ANY STUDY, AND THE LIMITS OF ANY DATA USED TO CONDUCT THE STUDY, CONDUCTED TO EVALUATE THE RISK ASSESSMENT INSTRUMENT AND EFFORTS TO REDUCE ANY IDENTIFIED BIAS TO THE GENERAL ASSEMBLY PURSUANT TO THE PROVISIONS OF SECTION 2-7-203.
- (10) BEGINNING ON JANUARY 1, 2024, ANY RISK ASSESSMENT INSTRUMENT APPROVED FOR USE MUST PROVIDE PRETRIAL DECISION-MAKERS SEPARATE RISK CATEGORY INFORMATION FOR EACH OF THE PRETRIAL RISKS IDENTIFIED IN SECTION 16-4-104(1) (a) (I) and (II), IF STATISTICALLY POSSIBLE.
- (11) IN ORDER TO EVALUATE AN APPROVED RISK ASSESSMENT INSTRUMENT FOR ACCURACY, BIAS AND PROPER MEASUREMENT OF RISK FACTORS, BEGINNING ON JANUARY 1, 2021, PRETRIAL SERVICES PROGRAMS, PERSONS COMPLETING THE PRETRIAL ASSESSMENT AND REPORT PROCESS AND THE JUDICIAL DEPARTMENT, SHALL COLLECT ALL RELEVANT DATA AS REQUESTED BY THE DIVISION OF CRIMINAL JUSTICE THIS DATA MUST INCLUDE, AT A MINIMUM, THE FOLLOWING INFORMATION FOR EACH CASE ASSESSED:
  - (a) RACE, ETHNICITY, AND GENDER;
  - (b) THE PRETRIAL RISK CATEGORY;

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- (c) NUMBER OF POINTS ASSIGNED TO EACH UNDERLYING VARIABLE USED BY A RISK ASSESSMENT INSTRUMENT;
  - (d) THE TOTAL RISK ASSESSMENT INSTRUMENT SCORE;
  - (e) ANY RECOMMENDATION MADE BY A STRUCTURED DECISION-MAKING GUIDE OR MATRIX, IF AVAILABLE;
  - (f) WHETHER THE RECOMMENDATION OF A STRUCTURED DECISION-MAKING DESIGN WAS FOLLOWED BY THE COURT, IF AVAILABLE;
  - (g) THE TYPE OF BOND SET BY THE COURT;
  - (h) THE CONDITIONS OF RELEASE SET BY THE COURT, WHICH MUST INCLUDE, BUT IS NOT LIMITED TO, WHETHER A MONETARY CONDITION WAS IMPOSED AND THE AMOUNT OF ANY MONETARY CONDITION;
  - (i) WHETHER THE DEFENDANT WAS RELEASED PRIOR TO THE FINAL DISPOSITION OF THE CASE;
  - (j) IF THE DEFENDANT FAILED TO APPEAR FOR COURT, AND WHETHER THE DEFENDANT SUBSEQUENTLY APPEARED IN COURT ON THAT CASE WITHIN THIRTY DAYS, SIXTY DAYS, NINETY DAYS, AND ONE HUNDRED TWENTY DAYS;
  - (k) THE PRETRIAL SUPERVISION OUTCOME; AND
  - (l) THE RESULTS OF ANY ADDITIONAL RISK ASSESSMENTS USED IN ORDER TO PROVIDE ADDITIONAL INFORMATION TO THE COURT.
- (12) UPON REQUEST BY THE DIVISION OF CRIMINAL JUSTICE, THE STATE COURT ADMINISTRATOR SHALL PROVIDE ANY AVAILABLE INFORMATION NECESSARY TO EVALUATE AN APPROVED RISK ASSESSMENT PURSUANT TO THIS SECTION. THE STATE COURT ADMINISTRATOR'S OFFICE AND THE DEPARTMENT OF PUBLIC SAFETY SHALL COOPERATE TO DEVELOP INFORMATION SHARING AND REPORTING METHODOLOGIES TO BE USED TO ALLOW FOR THE DATA COLLECTION AND EVALUATIONS REQUIRED PURSUANT TO THE PROVISION OF THIS SECTION.
- (13) THE DIVISION OF CRIMINAL JUSTICE SHALL PROVIDE TECHNICAL ASSISTANCE TO LOCAL JURISDICTIONS TO INCLUDE TRAINING, EDUCATION, INFORMATIONAL MATERIALS, AND TOOLS TO TRACK OUTCOMES AND FIDELITY TO BEST PRACTICES IN PROVIDING PRETRIAL SERVICES. THE DIVISION OF CRIMINAL JUSTICE SHALL COLLECT, ANALYZE, AND REPORT CENTRALIZED DATA TO IDENTIFY PRETRIAL RELEASE TRENDS AND OUTCOMES THROUGHOUT THE STATE.

**16-4-104. Initial Hearing – Factors for setting type of bond – Presumption of release – Least restrictive conditions - Presumption of release without monetary conditions – Right to competent counsel.**

- (1) BEGINNING JANUARY 1, 2021, IF AN ARRESTED PERSON IS NOT RELEASED PURSUANT TO THE PROVISIONS OF SECTION 16-4-103, THE COURT SHALL BRING THE PERSON BEFORE THE COURT AS SOON AS PRACTICABLE FOR AN INITIAL HEARING TO DETERMINE THE TYPE OF BOND AND THE CONDITIONS OF RELEASE. IN MAKING SUCH DETERMINATIONS, THE COURT SHALL PRESUME THE RELEASE OF THE PERSON WITH THE LEAST RESTRICTIVE CONDITIONS, WHETHER THEY ARE MONETARY, NONMONETARY OR BOTH. THE COURT SHALL SELECT A TYPE OF BOND AND IMPOSE

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CONDITIONS OF RELEASE THAT REASONABLY ENSURE: THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY; THAT THE PERSON WILL NOT ATTEMPT TO FLEE PROSECUTION; THAT THE PERSON WILL NOT ATTEMPT TO OBSTRUCT OR OTHERWISE WILLFULLY AVOID THE CRIMINAL JUSTICE PROCESS.

- (2) THE COURT SHALL PRESUME THE RELEASE OF THE DEFENDANT WITHOUT THE USE OF ANY MONETARY CONDITION OF RELEASE UNLESS THE COURT FINDS THAT ONE OR MORE OF THE FOLLOWING EXIST:
- (a) THE PERSON POSES A SUBSTANTIAL RISK OF DANGER TO THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY; OR
  - (b) THERE IS A SUBSTANTIAL RISK THAT THE PERSON WILL ATTEMPT TO FLEE PROSECUTION; OR
  - (c) THERE IS A SUBSTANTIAL RISK THAT THE PERSON WILL ATTEMPT TO OBSTRUCT OR OTHERWISE WILLFULLY AVOID THE CRIMINAL JUSTICE PROCESS; AND
  - (d) THERE ARE NO NONMONETARY CONDITIONS OF RELEASE THAT WILL REASONABLY ENSURE:
    - (I) THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY;
    - (II) THAT THE PERSON WILL NOT ATTEMPT TO FLEE PROSECUTION; OR
    - (III) THAT THE PERSON WILL NOT ATTEMPT TO OBSTRUCT OR OTHERWISE WILLFULLY AVOID THE CRIMINAL JUSTICE PROCESS
- (3) IN MAKING THE DETERMINATION ABOUT THE TYPE OF BOND AND CONDITIONS OF RELEASE, THE COURT SHALL CONSIDER:
- (a) THE INDIVIDUAL CIRCUMSTANCES OF THE PERSON IN CUSTODY, INCLUDING HIS OR HER FINANCIAL CIRCUMSTANCES;
  - (b) THE NATURE AND SEVERITY OF THE ALLEGED OFFENSE;
  - (c) VICTIM INPUT, IF RECEIVED;
  - (d) ALL TYPES OF BOND AND CONDITIONS OF RELEASE AVAILABLE TO AVOID UNNECESSARY PRETRIAL INCARCERATION AND CONDITIONS;
  - (e) THE WRITTEN CRITERIA FOR PRETRIAL RELEASE DEVELOPED BY THE JUDICIAL DISTRICT PURSUANT TO SECTION 16-4-103 (1)(b);
  - (f) THE EMPLOYMENT STATUS AND HISTORY OF THE PERSON IN CUSTODY;
  - (g) THE NATURE AND EXTENT OF FAMILY RELATIONSHIPS OF THE PERSON IN CUSTODY;
  - (h) PAST AND PRESENT RESIDENCES OF THE PERSON IN CUSTODY;
  - (i) THE CHARACTER AND REPUTATION OF THE PERSON IN CUSTODY;
  - (j) IDENTITY OF PERSONS WHO AGREE TO ASSIST THE PERSON IN CUSTODY IN ATTENDING COURT AT THE PROPER TIME;
  - (k) THE LIKELY SENTENCE, CONSIDERING THE NATURE OF THE OFFENSE PRESENTLY CHARGED, ESPECIALLY IF THE DEFENDANT IS NOT LIKELY TO BE SENTENCED TO INCARCERATION;

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- (l) THE PRIOR CRIMINAL RECORD, IF ANY, OF THE PERSON IN CUSTODY;
  - (m) PRIOR FAILURES TO APPEAR THAT INDICATE THE PERSON'S INTENT TO FLEE OR AVOID PROSECUTION;
  - (n) ANY FACTS INDICATING THAT THE DEFENDANT IS LIKELY TO INTIMIDATE OR HARASS POSSIBLE WITNESSES;
  - (o) ANY OTHER FACTS TENDING TO INDICATE THAT THE DEFENDANT HAS STRONG TIES TO THE COMMUNITY AND IS NOT LIKELY TO FLEE THE JURISDICTION; AND
  - (p) THE RESULTS OF AN EMPIRICALLY DEVELOPED AND VALIDATED RISK ASSESSMENT INSTRUMENT DESIGNED TO IMPROVE PRETRIAL RELEASE DECISIONS, AVAILABLE AND APPROVED FOR USE IN COLORADO BY THE DEPARTMENT OF PUBLIC SAFETY, DIVISION OF CRIMINAL JUSTICE PURSUANT TO THE PROVISIONS OF 16-4-103.5, THAT CLASSIFIES A PERSON IN CUSTODY BASED UPON THE PREDICTED LEVEL OF RISK OF PRETRIAL FAILURE. HOWEVER, THE RESULTS OF ANY RISK ASSESSMENT PROVIDED TO THE COURT MUST:
    - (I) INCLUDE THE RISK CATEGORY OF THE DEFENDANT ALONG WITH THE PREDICTED SUCCESS RATES FOR EACH RISK CATEGORY, IF AVAILABLE; AND
    - (II) NOT BE USED AS THE SOLE BASIS FOR SETTING THE TYPE AND CONDITIONS OF RELEASE.
- (4) AT THE INITIAL HEARING, THE PERSON HAS THE RIGHT TO BE REPRESENTED BY AN ATTORNEY AND MUST BE ADVISED OF THE POSSIBLE CHARGES, PENALTIES, AND HIS OR HER RIGHTS AS SPECIFIED IN RULE 5 OF THE COLORADO RULES OF CRIMINAL PROCEDURE, UNLESS WAIVED BY THE DEFENDANT. THE COURT SHALL NOTIFY THE PUBLIC DEFENDER OF EACH PERSON IN CUSTODY BEFORE THE INITIAL HEARING, AND THE PERSON HAS THE RIGHT TO BE REPRESENTED BY THE PUBLIC DEFENDER AT THAT HEARING. THE COURT SHALL PROVIDE THE ARRESTED PERSON'S ATTORNEY SUFFICIENT TIME TO PREPARE FOR AND PRESENT AN INDIVIDUALIZED ARGUMENT REGARDING THE TYPE OF BOND AND CONDITIONS OF RELEASE AT THE INITIAL HEARING, CONSISTENT WITH THE COURT'S DOCKET AND SCHEDULING PRIORITIES.
- (5) THE PROSECUTING ATTORNEY HAS THE RIGHT TO APPEAR AT ALL HEARINGS TO PROVIDE HIS OR HER POSITION REGARDING THE TYPE OF BOND AND CONDITIONS OF RELEASE, AND TO PROVIDE ANY OTHER RELEVANT INFORMATION.
- (6) PRIOR TO THE INITIAL HEARING, THE PERSON, PROGRAM, OR AGENCY THAT HAS CONDUCTED THE PRETRIAL RELEASE ASSESSMENT SHALL PROVIDE TO THE COURT, PROSECUTION, AND THE ARRESTED PERSONS'S ATTORNEY, ALL INFORMATION GATHERED REGARDING THE DEFENDANT, INCLUDING, BUT NOT LIMITED TO, THE RESULTS FROM ANY EMPIRICALLY DEVELOPED AND VALIDATED RISK ASSESSMENT INSTRUMENT AND THE ARREST AFFIDAVIT OR OTHER PROBABLE CAUSE STATEMENT. THIS INFORMATION SHALL BE PROVIDED TO THE PARTIES SUFFICIENTLY IN ADVANCE OF THE INITIAL HEARING SUCH THAT THE PARTIES ARE ABLE TO ADEQUATELY PREPARE FOR THE HEARING.
- (7) SHERIFF'S OFFICES AND JAIL PERSONNEL SHALL PROVIDE THE PUBLIC DEFENDER'S OFFICE OR PRIVATE COUNSEL ACCESS TO THE ARRESTED PERSON WHO WILL BE APPEARING AT THE HEARING,

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AND SHALL ALLOW SUFFICIENT TIME WITH THE ARRESTED PERSON PRIOR TO THE HEARING IN ORDER TO PREPARE FOR THE HEARING PURSUANT TO THE PROVISIONS OF THIS SECTION.

- (8) BECAUSE OF THE DANGER POSED TO ANY PERSON AND THE COMMUNITY, A PERSON WHO IS ARRESTED FOR AN OFFENSE UNDER SECTION 42-4-1301 (1) SHALL NOT ATTEND A BAIL HEARING UNTIL THE PERSON IS NO LONGER INTOXICATED OR UNDER THE INFLUENCE OF DRUGS. THE PERSON MUST BE HELD IN CUSTODY UNTIL THE PERSON MAY SAFELY ATTEND THE HEARING.

**16-4-104.5. Types of Bond.**

(1) THE TYPES OF BOND THAT MAY BE SET BY THE COURT INCLUDE:

- (a) AN UNSECURED PERSONAL RECOGNIZANCE BOND, WHICH MAY INCLUDE AN AMOUNT SPECIFIED BY THE COURT. THE COURT MAY REQUIRE ADDITIONAL OBLIGATORS ON THE BOND AS A CONDITION OF THE BOND.
- (b) AN UNSECURED PERSONAL RECOGNIZANCE BOND WITH ADDITIONAL NONMONETARY CONDITIONS OF RELEASE IMPOSED PURSUANT TO 16-4-105.
- (c) A BOND WITH A MONETARY CONDITION IF THE COURT MAKES A DETERMINATION ON THE RECORD THAT FACTS AND CIRCUMSTANCES EXIST THAT OVERRIDE THE PRESUMPTION OF RELEASE WITHOUT A MONETARY CONDITION. HOWEVER, THE COURT MAY ONLY REQUIRE A CERTAIN METHOD OF POSTING A MONETARY CONDITION AS DESCRIBED IN PARAGRAPH (d) IF THE COURT MAKES FACTUAL FINDINGS ON THE RECORD THAT THE CERTAIN METHOD IS REASONABLE AND NECESSARY TO ENSURE:
  - (I) THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY;
  - (II) THAT THE PERSON WILL NOT ATTEMPT TO FLEE PROSECUTION; OR
  - (III) THAT THE PERSON WILL NOT ATTEMPT TO OBSTRUCT OR OTHERWISE WILLFULLY AVOID THE CRIMINAL JUSTICE PROCESS.
- (d) IF A BOND WITH A SECURED MONETARY CONDITION IS SET, THE PERSON SHALL BE RELEASED FROM CUSTODY UPON EXECUTION OF THE BOND IN THE FULL AMOUNT OF MONEY TO BE SECURED BY ANY ONE OF THE FOLLOWING METHODS:
  - (I) BY A DEPOSIT WITH THE CLERK OF THE COURT OF AN AMOUNT OF CASH EQUAL TO THE MONETARY CONDITION OF THE BOND;
  - (II) BY REAL ESTATE SITUATED IN THIS STATE WITH UNENCUMBERED EQUITY NOT EXEMPT FROM EXECUTION OWNED BY THE ACCUSED OR ANY OTHER PERSON ACTING AS SURETY ON THE BOND, WHICH UNENCUMBERED EQUITY SHALL BE AT LEAST ONE AND ONE-HALF OF THE AMOUNT OF THE SECURITY SET IN THE BOND;
  - (III) BY SURETIES WORTH AT LEAST ONE AND ONE-HALF OF THE SECURITY SET IN THE BOND;  
OR
  - (IV) BY A BAIL BONDING AGENT, AS DEFINED IN SECTION 16-1-104 8 (3.5).

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- (e) A BOND WITH SECURED REAL ESTATE CONDITIONS. HOWEVER, THE CLERK OF THE COURT SHALL NOT ACCEPT A BOND SECURED BY REAL ESTATE UNLESS THE RECORD OWNER OF THE PROPERTY PRESENTS TO THE CLERK OF THE COURT THE ORIGINAL DEED OF TRUST AS DESCRIBED IN SUBSECTION (4)(d)(IV) OF THIS SECTION AND THE APPLICABLE RECORDING FEE. UPON RECEIPT OF THE DEED OF TRUST AND FEE, THE CLERK OF THE COURT SHALL RECORD THE DEED OF TRUST WITH THE CLERK AND RECORDER FOR THE COUNTY IN WHICH THE PROPERTY IS LOCATED. FOR A BOND SECURED BY REAL ESTATE, THE AMOUNT OF THE OWNER'S UNENCUMBERED EQUITY SHALL BE DETERMINED BY DEDUCTING THE AMOUNT OF ALL ENCUMBRANCES LISTED IN THE OWNER AND ENCUMBRANCES CERTIFICATE FROM THE ACTUAL VALUE OF SUCH REAL ESTATE AS SHOWN ON THE CURRENT NOTICE OF VALUATION. THE OWNER OF THE REAL ESTATE SHALL FILE WITH THE BOND ALL OF THE FOLLOWING, WHICH SHALL CONSTITUTE A MATERIAL PART OF THE BOND:
- (I) THE CURRENT NOTICE OF VALUATION OF SUCH REAL ESTATE PREPARED BY THE COUNTY ASSESSOR PURSUANT TO SECTION 39-5-121;
  - (II) EVIDENCE OF TITLE ISSUED BY A TITLE INSURANCE COMPANY OR AGENT LICENSED PURSUANT TO ARTICLE 11 OF TITLE 10, WITHIN THIRTY-FIVE DAYS AFTER THE DATE UPON WHICH THE BOND IS FILED;
  - (III) A SWORN STATEMENT BY THE OWNER OF THE REAL ESTATE THAT THE REAL ESTATE IS SECURITY FOR THE COMPLIANCE BY THE DEFENDANT WITH THE PRIMARY CONDITION OF THE BOND; AND
  - (IV) A DEED OF TRUST TO THE PUBLIC TRUSTEE OF THE COUNTY OR 10 CITY AND COUNTY IN WHICH THE REAL ESTATE IS LOCATED THAT IS EXECUTED AND ACKNOWLEDGED BY ALL RECORD OWNERS OF THE REAL ESTATE. THE DEED OF TRUST MUST NAME THE CLERK OF THE COURT APPROVING THE BOND AS BENEFICIARY. THE DEED OF TRUST MUST SECURE AN AMOUNT EQUAL TO ONE AND ONE-HALF TIMES THE AMOUNT OF THE BOND.
- (f) SHALL BE RELEASED FROM CUSTODY UPON EXECUTION OF BOND IN THE FULL AMOUNT OF MONEY TO BE SECURED BY ANY ONE OF THE FOLLOWING METHODS, AS SELECTED BY THE DEFENDANT:
- (I) BY A DEPOSIT WITH THE CLERK OF THE COURT OF AN AMOUNT OF CASH EQUAL TO THE MONETARY CONDITION OF THE BOND;
  - (II) BY REAL ESTATE SITUATED IN THIS STATE WITH UNENCUMBERED EQUITY NOT EXEMPT FROM EXECUTION OWNED BY THE ACCUSED OR ANY OTHER PERSON ACTING AS SURETY ON THE BOND, WHICH UNENCUMBERED EQUITY SHALL BE AT LEAST ONE AND ONE-HALF OF THE AMOUNT OF THE SECURITY SET IN THE BOND;
  - (III) BY SURETIES WORTH AT LEAST ONE AND ONE-HALF OF THE SECURITY SET IN THE BOND;  
OR
  - (IV) BY A BAIL BONDING AGENT, AS DEFINED IN SECTION 16-1-104 8 (3.5).
- (g) A BOND WITH SECURED REAL ESTATE CONDITIONS. HOWEVER, THE CLERK OF THE COURT SHALL NOT ACCEPT A BOND SECURED BY REAL ESTATE UNLESS THE RECORD OWNER OF THE PROPERTY PRESENTS TO THE CLERK OF THE COURT THE ORIGINAL DEED OF TRUST AS DESCRIBED IN

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SUBSECTION (4)(d)(IV) OF THIS SECTION AND THE APPLICABLE RECORDING FEE. UPON RECEIPT OF THE DEED OF TRUST AND FEE, THE CLERK OF THE COURT SHALL RECORD THE DEED OF TRUST WITH THE CLERK AND RECORDER FOR THE COUNTY IN WHICH THE PROPERTY IS LOCATED. FOR A BOND SECURED BY REAL ESTATE, THE AMOUNT OF THE OWNER'S UNENCUMBERED EQUITY SHALL BE DETERMINED BY DEDUCTING THE AMOUNT OF ALL ENCUMBRANCES LISTED IN THE OWNER AND ENCUMBRANCES CERTIFICATE FROM THE ACTUAL VALUE OF SUCH REAL ESTATE AS SHOWN ON THE CURRENT NOTICE OF VALUATION. THE OWNER OF THE REAL ESTATE SHALL FILE WITH THE BOND ALL OF THE FOLLOWING, WHICH SHALL CONSTITUTE A MATERIAL PART OF THE BOND:

- (I) THE CURRENT NOTICE OF VALUATION OF SUCH REAL ESTATE PREPARED BY THE COUNTY ASSESSOR PURSUANT TO SECTION 39-5-121;
- (II) EVIDENCE OF TITLE ISSUED BY A TITLE INSURANCE COMPANY OR AGENT LICENSED PURSUANT TO ARTICLE 11 OF TITLE 10, WITHIN THIRTY-FIVE DAYS AFTER THE DATE UPON WHICH THE BOND IS FILED;
- (III) A SWORN STATEMENT BY THE OWNER OF THE REAL ESTATE THAT THE REAL ESTATE IS SECURITY FOR THE COMPLIANCE BY THE DEFENDANT WITH THE PRIMARY CONDITION OF THE BOND; AND
- (IV) A DEED OF TRUST TO THE PUBLIC TRUSTEE OF THE COUNTY OR 10 CITY AND COUNTY IN WHICH THE REAL ESTATE IS LOCATED THAT IS EXECUTED AND ACKNOWLEDGED BY ALL RECORD OWNERS OF THE REAL ESTATE. THE DEED OF TRUST MUST NAME THE CLERK OF THE COURT APPROVING THE BOND AS BENEFICIARY. THE DEED OF TRUST MUST SECURE AN AMOUNT EQUAL TO ONE AND ONE-HALF TIMES THE AMOUNT OF THE BOND.

**16-4-105. Conditions of release.**

- (1) For each bond, the court shall require that the released person appear to answer the charge against the person at a place and upon a date certain and at any place or upon any date to which the proceeding is transferred or continued. This condition is the only condition for which a breach of surety or security on the bail bond may be subject to forfeiture.
- (2) For a person who has been arrested for a felony offense, the court shall require as a condition of a bond that the person execute a waiver of extradition stating the person consents to extradition to this state and waives all formal procedures incidental to extradition proceedings in the event that he or she is arrested in another state while at liberty on such bail bond and acknowledging that he or she shall not be admitted to bail in any other state pending extradition to this state.
- (3) Additional conditions of every bond is that the released person shall not commit any felony while free on such a bail bond, and the court in which the action is pending has the power to revoke the release of the person, to change any bond condition, including the amount of any monetary condition if it is shown that a competent court has found probable cause to believe that the defendant has committed a felony while released, pending the resolution of a prior felony charge.
- (4) An additional condition of every bond in cases involving domestic violence as defined in Section 18-6-800.3 (1), C.R.S., in cases of stalking under Section 18-3-602, C.R.S., or in cases involving unlawful



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sexual behavior as defined in Section 16-22-102 (9), is that the released person acknowledge the protection order as provided in Section 18-1-1001 (5), C.R.S.

- (5) An additional condition of every bond in a case of an offense under Section 42-2-138 (1)(d)(i), C.R.S., of driving while such person's driver's license or privilege to drive, either as a resident or nonresident, is restrained solely or partially because of a conviction of a driving offense pursuant to Section 42-4-1301 (1) or (2)(a), C.R.S., is that such person not drive any motor vehicle during the period of such driving restraint.
- (6) (a) If a person is arrested for driving under the influence or driving while ability impaired, pursuant to Section 42-4-1301, C.R.S., and the person has one or more previous convictions for an offense in Section 42-4-1301, C.R.S., or one or more convictions in any other jurisdiction that would constitute a violation of section 42-4-1301, C.R.S., as a condition of any bond, the court shall order that the person abstain from the use of alcohol or illegal drugs, and such abstinence shall be monitored.
- (b) A person seeking relief from any of the conditions imposed pursuant to subsection (6)(a) of this section shall file a motion with the court, and the court shall conduct a hearing upon the motion. the court shall consider whether the condition from which the person is seeking relief is in the interest of justice and whether public safety would be endangered if the condition were not enforced. when determining whether to grant relief pursuant to this subsection (6)(b), the court shall consider whether the person has voluntarily enrolled and is participating in an appropriate substance use disorder treatment program.
- (c) Notwithstanding subsection (6)(a) or any other provision of this section, if a person possesses a valid registry identification card, as defined in Section 25-1.5-106 (2)(e), that establishes that he or she is a patient who uses medical marijuana, the court shall not require as a condition of any bond that the person abstain from the use of medical marijuana.
- (7) A PERSON MAY BE RELEASED ON A BOND WITH MONETARY CONDITION OF BOND ONLY AS DESCRIBED IN SECTION 16-4-104.5(1)(C).
- (8) THE COURT MAY IMPOSE ADDITIONAL LEAST RESTRICTIVE NONMONETARY CONDITIONS OF RELEASE ONLY IF THEY ARE DESIGNED SPECIFICALLY TO REASONABLY ENSURE THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY; THAT THE PERSON WILL NOT ATTEMPT TO FLEE PROSECUTION; OR THAT THE PERSON WILL NOT ATTEMPT TO OBSTRUCT OR OTHERWISE WILLFULLY AVOID THE CRIMINAL JUSTICE PROCESS. THESE CONDITIONS MAY INCLUDE, BUT ARE NOT LIMITED TO, SUPERVISION BY A QUALIFIED PERSON OR ORGANIZATION OR SUPERVISION BY A PRETRIAL SERVICES PROGRAM ESTABLISHED PURSUANT TO SECTION 16-4-106. WHILE UNDER SUPERVISION, THE CONDITIONS OF RELEASE IMPOSED BY THE COURT MAY INCLUDE, BUT ARE NOT LIMITED TO:
- (a) PERIODIC TELEPHONE CONTACT WITH THE PROGRAM;
- (b) PERIODIC OFFICE VISITS BY THE PERSON TO THE PRETRIAL SERVICES PROGRAM OR ORGANIZATION;
- (c) PERIODIC ALCOHOL OR DRUG TESTING OF THE PERSON, SUBJECT TO THE LIMITATIONS IN PARAGRAPH (9);

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- (d) TREATMENT OF THE PERSON'S MENTAL HEALTH, BEHAVIORAL HEALTH, OR SUBSTANCE USE DISORDER IF THE PERSON CONSENTS TO THE TREATMENT;
  - (e) ELECTRONIC OR GLOBAL POSITION MONITORING OF THE PERSON SUBJECT TO THE LIMITATIONS IN PARAGRAPH (9);
  - (f) PRETRIAL WORK RELEASE FOR THE PERSON; AND
  - (g) OTHER SUPERVISION TECHNIQUES SHOWN BY RESEARCH TO INCREASE COURT APPEARANCE AND PUBLIC SAFETY RATES FOR PERSONS RELEASED ON BOND.
- (9) THE COURT SHALL NOT ORDER ELECTRONIC MONITORING OF ANY TYPE, PERIODIC ALCOHOL OR DRUG TESTING, MONITORED SOBRIETY, OR PROHIBIT THE USE OF ALCOHOL OR ANY OTHER CONTROLLED SUBSTANCE AS A CONDITION OF RELEASE FOR ANY MUNICIPAL OFFENSE, PETTY OFFENSE, TRAFFIC OFFENSE, OR MISDEMEANOR OFFENSE UNLESS:
- (a) THE CASE INVOLVES A CRIME AS ENUMERATED IN § 24-4.1-302(1) FOR PURPOSES OF VICTIMS RIGHTS; A CRIME IN VIOLATION OF 42-4-1301 (DUI OR DWAI); A CRIME INVOLVING THE USE, POSSESSION OR DISTRIBUTION OF A CONTROLLED SUBSTANCE PURSUANT TO 18-18-102(5); OR A CRIME INVOLVING THE USE OR POSSESSION OF A FIREARM AS DEFINED IN § 18-1-901(3)(h); AND
  - (b) THE COURT ENTERS SPECIFIC AND INDIVIDUALIZED FINDINGS ON THE RECORD THAT SUCH CONDITION IS NECESSARY IN THE INDIVIDUAL CASE BECAUSE IT WILL:
    - (I) MITIGATE A SUBSTANTIAL RISK OF FLIGHT OR
    - (II) PROTECT THE PHYSICAL SAFETY OF A PERSON OR PERSONS OTHER THAN THE DEFENDANT.
- (10) NO PERSON UNDER SUPERVISION ON PRETRIAL RELEASE SHALL BE PLACED UNDER ANY CONDITIONS OF SUPERVISION THAT HAVE NOT BEEN DIRECTLY ORDERED BY THE COURT. NO PERSON RELEASED WITH A MONETARY CONDITION OF BOND THROUGH A COMMERCIAL SURETY SHALL BE REQUIRED TO COMPLY WITH CONDITIONS OF SUPERVISION THAT HAVE NOT BEEN DIRECTLY ORDERED BY THE COURT.

**16-4-106. Pretrial services programs – Mandate for risk assessment and annual report.**

- (1) TO REDUCE BARRIERS TO PRETRIAL RELEASE, ALL COUNTIES AND CITIES AND COUNTIES SHALL DEVELOP BY APRIL 1, 2021, A PRETRIAL SERVICES PROGRAM IN CONSULTATION WITH THE CHIEF JUDGE OF THE JUDICIAL DISTRICT THAT MAY BE UTILIZED BY THE COURTS OF THE JUDICIAL DISTRICT. IN ORDER TO ESTABLISH THE PRETRIAL SERVICES PROGRAM, THE CHIEF JUDGE OF EACH JUDICIAL DISTRICT SHALL ESTABLISH A COMMUNITY PRETRIAL ADVISORY BOARD TO FORMULATE A PLAN FOR A PRETRIAL SERVICES PROGRAM. IN ADDITION TO THE CHIEF JUDGE OF THE JUDICIAL DISTRICT OR A DESIGNATED JUDICIAL OFFICER, MEMBERSHIP ON SUCH COMMUNITY PRETRIAL ADVISORY BOARD MUST INCLUDE, AT A MINIMUM: A REPRESENTATIVE OF A LOCAL LAW ENFORCEMENT AGENCY, A REPRESENTATIVE OF THE DISTRICT ATTORNEY, A REPRESENTATIVE OF THE OFFICE OF THE PUBLIC DEFENDER, A VICTIM ADVOCATE, AND AN INDIVIDUAL WHO HAS BEEN INCARCERATED IN THE JUDICIAL DISTRICT OR A FAMILY MEMBER OF AN INDIVIDUAL WHO HAS BEEN INCARCERATED IN THE JUDICIAL DISTRICT. THE CHIEF JUDGE IS ENCOURAGED TO APPOINT TO

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THE COMMUNITY PRETRIAL ADVISORY BOARD AT LEAST ONE COUNTY COMMISSIONER FROM A COUNTY WITHIN THE JUDICIAL DISTRICT. THE CHIEF JUDGE OF THE JUDICIAL DISTRICT SHALL APPROVE THE PLAN FORMULATED BY THE COMMUNITY ADVISORY BOARD PRIOR TO THE ESTABLISHMENT AND UTILIZATION OF THE PRETRIAL SERVICES PROGRAM. THE PROVISION CONTAINED IN THIS SECTION THAT A PRETRIAL SERVICES PROGRAM BE ESTABLISHED PURSUANT TO A PLAN FORMULATED BY THE COMMUNITY PRETRIAL ADVISORY BOARD DOES NOT APPLY TO ANY PRETRIAL SERVICES PROGRAM THAT EXISTED BEFORE MAY 31, 1991.

- (2) COUNTIES OR GOVERNMENTAL CONTRACT OFFICIALS SHALL DIRECTLY PROVIDE THE PRETRIAL ASSESSMENT SERVICES AS REQUIRED PURSUANT TO 16-4-103, AND MAY DIRECTLY PROVIDE PRETRIAL SUPERVISION SERVICES OR MAY ENTER INTO A CONTRACT WITH A PRIVATE ENTITY OR AN AGREEMENT WITH ANOTHER LOCAL GOVERNMENTAL ENTITY TO PROVIDE PRETRIAL SUPERVISION SERVICES IN THE COUNTY. PRIOR TO ENTERING INTO A CONTRACT WITH A PRIVATE ENTITY, THE COUNTY SHALL ENSURE THE PRIVATE ENTITY SHALL OPERATE WITHOUT AN IDENTIFIABLE CONFLICT. ADDITIONALLY, EACH JUDGE REQUIRING PRETRIAL SERVICES SUPERVISION FOR A PERSON RELEASED ON BOND SHALL ENSURE THAT ANY SUPERVISION OR OTHER CONDITIONS OF RELEASE FOR A DEFENDANT UNDER PRETRIAL SUPERVISION ARE THE LEAST RESTRICTIVE CONDITIONS OF RELEASE AND ARE NOT REQUIRED FOR THE PURPOSES OF FINANCIAL BENEFIT OR GAIN BY ANY PERSON, PROGRAM OR ENTITY.
- (3) A PRETRIAL SERVICES PROGRAM CREATED PURSUANT TO THIS SECTION, INCLUDING ANY PROGRAM UTILIZING A PRIVATE ENTITY PURSUANT TO SUBSECTION (2), MUST MEET THE MINIMUM STANDARDS DEVELOPED BY THE DIVISION OF CRIMINAL JUSTICE PURSUANT TO 16-4-103.5. IN ADDITION, A PRETRIAL SERVICES PROGRAM SHALL MEET THE FOLLOWING CRITERIA:
- (a) THE PRETRIAL SERVICES PROGRAM MUST ESTABLISH A PROCEDURE FOR THE ASSESSMENT OF PERSONS WHO ARE DETAINED DUE TO AN ARREST FOR THE ALLEGED COMMISSION OF A CRIME SO THAT SUCH ASSESSMENT AND INFORMATION MAY BE PROVIDED TO THE BONDING AND RELEASE COMMISSIONER MAKING A DETERMINATION FOR IMMEDIATE RELEASE PURSUANT TO 16-4-103 AND TO THE JUDGE OR OTHER DESIGNATED JUDICIAL OFFICER WHO IS DECIDING THE TYPE OF BOND AND CONDITIONS OF RELEASE. THE PRETRIAL SERVICES PROGRAM MUST PROVIDE INFORMATION THAT GIVES THE RELEASING AUTHORITY THE ABILITY TO MAKE A DECISION THAT IS BASED UPON ALL FACTS RELEVANT TO WHETHER THE PERSON POSES A SUBSTANTIAL RISK TO THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY, THAT THE PERSON WILL ATTEMPT TO FLEE PROSECUTION, OR THAT THE PERSON WILL ATTEMPT TO OBSTRUCT OR OTHERWISE WILLFULLY AVOID THE CRIMINAL JUSTICE PROCESS;
  - (b) THE PRETRIAL SERVICES PROGRAM MUST MAKE ALL REASONABLE ATTEMPTS TO PROVIDE THE COURT, OTHER DESIGNATED PERSON OR AGENCY, THE PROSECUTING ATTORNEY AND DEFENSE COUNSEL WITH SUCH INFORMATION SPECIFIED IN THIS SECTION FOR EACH PERSON SEEKING RELEASE FROM CUSTODY FOR PURPOSES OF SETTING BOND AND CONDITIONS OF RELEASE;
  - (c) COMMENCING APRIL 1, 2021, IN THE COURSE OF PRETRIAL ASSESSMENT OF AN ARRESTED PERSON, THE PRETRIAL SERVICES PROGRAM MUST USE A PRETRIAL RISK ASSESSMENT TOOL THAT HAS BEEN APPROVED FOR USE BY THE DEPARTMENT OF PUBLIC SAFETY, DIVISION OF CRIMINAL JUSTICE, TO ASSESS A PERSON'S PREDICTIVE LEVEL OF PRETRIAL RISK ALONG WITH A

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STRUCTURED DECISION-MAKING GUIDE OR MATRIX BASED UPON THE PERSON'S CHARGE AND THE RISK ASSESSMENT SCORE; AND

- (d) THE PRETRIAL SERVICES PROGRAM MUST WORK WITH ALL APPROPRIATE AGENCIES AND ASSIST WITH ALL EFFORTS TO COMPLY WITH SECTIONS 24-4.1-302.5 AND 24-4.1-303.
- (4) ANY PRETRIAL SERVICES SUPERVISION PROGRAM SHALL PROVIDE DIFFERENT METHODS AND LEVELS OF COMMUNITY-BASED SUPERVISION AS CONDITIONS OF RELEASE, AND THE PRETRIAL SERVICES SUPERVISION PROGRAM MUST USE RESEARCH-BASED METHODS FOR PERSONS WHO ARE RELEASED PRIOR TO TRIAL IN ORDER TO DECREASE UNNECESSARY PRETRIAL DETENTION. THE PRETRIAL SERVICES PROGRAM MAY INCLUDE, BUT IS NOT LIMITED TO, COURT DATE REMINDERS AND SHALL BE LIMITED TO THE LEAST RESTRICTIVE CONDITIONS OF RELEASE AS OUTLINED IN SECTION 16-4-105 (8).
- (5) NO COSTS OF PRETRIAL ASSESSEMENT, PRETRIAL SUPERVISION SERVICES, OR ANY CONDITION OF PRETRIAL RELEASE SHALL BE ASSESSED AGAINST A DEFENDANT BEFORE OR DURING THE PRETRIAL SUPERVISION PERIOD OF THE DEFENDANT OR AS A CONDITION OF RELEASE FROM CUSTODY. THE COSTS OF SUPERVISION INCLUDING THE COSTS OF COMPLIANCE WITH ANY TERM AND CONDITION OF SUPERVISION MAY ONLY BE ASSESSED UPON CONVICTION AS COSTS OF PROSECUTION. HOWEVER, SUCH COSTS SHALL NOT BE ASSESSED AGAINST ANY PERSON WHO QUALIFIES AS INDIGENT UNDER THE DIRECTIVES OF THE COLORADO SUPREME COURT FOR COURT APPOINTED COUNSEL AT THE TIME OF SENTENCING ON THE CASE.
- (6) COMMENCING IN 2021, EACH PRETRIAL SERVICES PROGRAM ESTABLISHED PURSUANT TO THIS SECTION SHALL PROVIDE AN ANNUAL CALENDAR YEAR REPORT TO THE DEPARTMENT OF PUBLIC SAFETY NO LATER THAN MARCH 1 OF EACH YEAR. THE DEPARTMENT SHALL PRESENT AN ANNUAL COMBINED REPORT TO THE JUDICIARY COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR ANY SUCCESSOR COMMITTEES. THE REPORT TO THE DEPARTMENT MUST INCLUDE, BUT IS NOT LIMITED TO, THE FOLLOWING INFORMATION:
  - (a) THE TOTAL NUMBER OF PRETRIAL ASSESSMENTS PERFORMED BY THE PRETRIAL SERVICES PROGRAM;
  - (b) THE TOTAL NUMBER OF CLOSED CASES BY THE PRETRIAL SERVICES PROGRAM IN WHICH THE PERSON WAS RELEASED FROM CUSTODY AND SUPERVISED BY THE PRETRIAL SERVICES PROGRAM;
  - (c) THE TOTAL NUMBER OF CLOSED CASES IN WHICH THE PERSON WAS RELEASED FROM CUSTODY, WAS SUPERVISED BY THE PRETRIAL SERVICES PROGRAM, AND, WHILE UNDER SUPERVISION, APPEARED FOR ALL SCHEDULED COURT APPEARANCES ON THE CASE;
  - (d) THE TOTAL NUMBER OF CLOSED CASES IN WHICH THE PERSON WAS RELEASED FROM CUSTODY, WAS SUPERVISED BY THE PRETRIAL SERVICES PROGRAM, AND WAS NOT CHARGED WITH A NEW CRIMINAL OFFENSE THAT WAS ALLEGED TO HAVE OCCURRED WHILE UNDER SUPERVISION AND THAT CARRIED THE POSSIBILITY OF A SENTENCE TO JAIL OR IMPRISONMENT;
  - (e) THE TOTAL NUMBER OF CLOSED CASES IN WHICH THE PERSON WAS RELEASED FROM CUSTODY AND WAS SUPERVISED BY THE PRETRIAL SERVICES PROGRAM, AND THE PERSON'S BOND WAS

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NOT REVOKED BY THE COURT DUE TO A VIOLATION OF ANY OTHER TERMS AND CONDITIONS OF SUPERVISION; AND

- (f) ANY ADDITIONAL INFORMATION THE DEPARTMENT MAY REQUEST
- (7) BEGINNING IN 2021 AND EACH YEAR THEREAFTER, THE ANNUAL REPORT REQUIRED BY SECTION (6) OF THIS SECTION MUST ALSO INCLUDE:
- (a) THE TOTAL NUMBER OF CLOSED CASES IN WHICH THE PERSON WAS RELEASED FROM CUSTODY, WAS SUPERVISED BY THE PRETRIAL SERVICES PROGRAM, AND, WHILE UNDER SUPERVISION, FAILED TO APPEAR IN COURT. BASED ON INFORMATION PROVIDED BY STATE JUDICIAL, WHETHER ANY OF THE PERSONS WHO FAILED TO APPEAR IN COURT RETURNED TO COURT:
- (I) WITHIN 30 DAYS;
- (II) WITHIN 60 DAYS;
- (III) WITHIN 90 DAYS; AND
- (IV) WITHIN 120 DAYS.
- (b) THE TOTAL NUMBER OF CLOSED CASES OF PERSONS RELEASED FROM CUSTODY, SUPERVISED BY THE PRETRIAL SERVICES PROGRAM, AND CHARGED WITH A NEW CRIMINAL OFFENSE THAT CONSTITUTES A FELONY OFFENSE, A CRIME OF VIOLENCE AS DEFINED IN SECTION 18-1.3-406, OR A CRIME AS DEFINED IN SECTION 24-4.1-302 (1), THAT WAS ALLEGED TO HAVE OCCURRED WHILE UNDER SUPERVISION.
- (c) THE TOTAL NUMBER OF CASES IN WHICH THERE IS A DISPOSITION WHICH TERMINATES OR CLOSES THE CASE OR AN ACTION OF THE COURT SUCH AS WARRANT, FAILURES TO APPEAR (FTA), FAILURE TO COMPLY (FTC) OR REMOVAL OF SUPERVISION.
- (8) IN EACH ANNUAL REPORT, THE PRETRIAL SERVICES PROGRAM MUST INCLUDE INFORMATION DETAILING THE NUMBER OF CASES SUBJECT TO PRETRIAL SUPERVISION AND RELEASED ON: A PERSONAL RECOGNIZANCE BOND, A COMMERCIAL SURETY BOND; A CASH ONLY BOND; A PRIVATE SURETY BOND; OR PROPERTY BOND.

**16-4-106.5. Pretrial services fund created.**

- (1) THERE IS CREATED IN THE STATE TREASURY THE PRETRIAL SERVICES FUND, REFERRED TO IN THIS SECTION AS THE "FUND", THAT CONSISTS OF MONEY APPROPRIATED BY THE GENERAL ASSEMBLY TO THE FUND AND ANY MONEY RECEIVED THROUGH GIFTS, GRANTS, OR DONATIONS. THE MONEY IN THE FUND IS SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE IMPLEMENTATION OF THIS SECTION. THE DEPARTMENT OF PUBLIC SAFETY IS AUTHORIZED TO ACCEPT ON BEHALF OF THE STATE ANY GIFTS, GRANTS, OR DONATIONS FROM ANY PRIVATE OR PUBLIC SOURCE FOR THE PURPOSE OF THIS SECTION. ALL PRIVATE AND PUBLIC MONEY RECEIVED THROUGH GIFTS, GRANTS, OR DONATIONS MUST BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE FUND.
- (2) MONEY IN THE FUND MUST BE USED TO FUND INDIVIDUAL COUNTIES OR COUNTIES WORKING IN COOPERATION WITH EACH OTHER, THAT REQUEST FUNDS TO OPERATE OR ASSIST IN THE

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OPERATION OF A PRETRIAL SERVICES PROGRAM AS REQUIRED BY SECTION 16-4-106 (1). MONEY MAY BE USED FOR THE ADMINISTRATIVE AND PERSONNEL COSTS RELATED TO THE OPERATION OF PRETRIAL SERVICES PROGRAMS AND ANY ADJUNCT SERVICES INCLUDING, BUT NOT LIMITED TO, PROGRAM DEVELOPMENT, ASSESSMENT SERVICES, CONTRACT SERVICES, AND SUPERVISION SERVICES. HOWEVER, FUNDING FOR ASSESSMENT SERVICES FOR EARLY RELEASE SHALL BE THE PRIORITY FOR ALL COUNTIES. COUNTIES AND COUNTIES WORKING IN COOPERATION WITH EACH OTHER, ARE ENCOURAGED TO SEEK FUNDING WHEN NECESSARY TO IMPLEMENT LOCALLY BASED PROGRAMS DESIGNED TO ACHIEVE THE GOALS OF EFFECTIVE PRETRIAL ASSESSMENT AND SUPERVISION.

- (3) THE DEPARTMENT OF PUBLIC SAFETY IS AUTHORIZED TO ADMINISTER THE PRETRIAL SERVICES FUND AND EXECUTE ALL CONTRACTS WITH UNITS OF LOCAL GOVERNMENT OR NON-GOVERNMENTAL AGENCIES FOR THE PROVISION OF PRETRIAL ASSESSEMENT AND SUPERVISION SERVICES CONSISTENT WITH THE PROVISIONS OF THIS SECTION.
- (4) MONEY ALLOCATED TO THE COUNTIES MAY BE USED BY THE COUNTY, TO CREATE A NEW PRETRIAL SERVICES PROGRAM, TO ENHANCE THE CURRENT COUNTY PRETRIAL SERVICES PROGRAM, OR TO REPLACE COUNTY FUNDS CURRENTLY ALLOCATED TO A PRETRIAL SERVICES PROGRAM.
- (5) THE DEPARTMENT OF PUBLIC SAFETY SHALL ALLOCATE FUNDS TO COUNTIES FOR PRETRIAL SERVICES SUBJECT TO THE FOLLOWING PRIORITIES AND LIMITATIONS:
  - (a) FUNDING FOR PRETRIAL ASSESSMENT SERVICES IN EACH COUNTY, WHICH SHALL BE CONSISTENT WITH THE PROVISIONS OF 16-4-103 AND 106 AND ALLOW FOR THE EARLY RELEASE OF PERSONS ARRESTED WITHOUT MONETARY CONDITIONS OF BOND, SHALL BE PRIORITIZED BY THE DEPARTMENT. ASSESSMENT SERVICES SHALL BE FUNDED PURSUANT TO A FORMULA DEVELOPED BY THE DEPARTMENT OF PUBLIC SAFETY, DIVISION OF CRIMINAL JUSTICE, THAT ESTIMATES THE AVERAGE AMOUNT OF TIME REQUIRED TO COMPLETE AN INDIVIDUALIZED ASSESSMENT, TIME IN COURT IF THE PERSON ARRESTED IS REQUIRED TO APPEAR IN COURT, THE AVERAGE STATEWIDE COST FOR A PRETRIAL SERVICES EMPLOYEE AND THE NUMBER ASSESSMENTS PREDICTED FOR THAT COUNTY BASED ON COURT FILINGS. NO COUNTY SHALL BE PROVIDED FUNDING IN EXCESS OF THE DOLLAR AMOUNT THAT IS THE EQUIVALENT, TO THE STATEWIDE AVERAGE COST OF TWO FULL TIME PRETRIAL SERVICE EMPLOYEE POSITIONS. PRETRIAL ASSESSMENT SERVICES SHALL BE PROVIDED BY THE COUNTY. NO COSTS OF PRETRIAL ASSESSMENT SHALL BE ASSESSED AGAINST ANY ARRESTED PERSON AT ANY TIME.
  - (b) PRETRIAL SUPERVISION SERVICES SHALL BE FUNDED BY THE DEPARTMENT IN EACH COUNTY CONSISTENT WITH THE PROVISIONS OF 16-4-103 AND 106 AND WHICH ALLOW FOR THE CONTINUED RELEASE OF A PERSON. SUPERVISION SERVICES SHALL BE FUNDED FOR ONLY HIGHER RISK DEFENDANTS PURSUANT TO A FORMULA DEVELOPED BY THE DEPARTMENT OF PUBLIC SAFETY, DIVISION OF CRIMINAL JUSTICE, THAT ESTIMATES THE AVERAGE AMOUNT OF TIME REQUIRED FOR SUPERVISION OF A HIGHER RISK DEFENDANT, AND THE AVERAGE DURATION OF A CASE FOR WHICH A PERSON WOULD BE UNDER PRETRIAL SUPERVISION. NO COUNTY SHALL BE PROVIDED PRETRIAL SUPERVISION SERVICES FUNDS IN EXCESS OF THE DOLLAR AMOUNT THAT IS THE EQUIVALENT, TO THE EXTENT POSSIBLE, TO THE STATEWIDE AVERAGE COST OF ONE FULL TIME EQUIVALENT POSITION.

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**16-4-107. Time frames for commencement of action.**

- (1) AFTER THE INITIAL HEARING AS PROVIDED BY SECTION 16-4-104, THE COURT SHALL ORDER THAT THE COMMENCEMENT OF THE CRIMINAL PROSECUTION BY THE FILING OF A COMPLAINT OR INFORMATION, PURSUANT TO THE PROVISIONS OF SECTION 16-5-101, MUST TAKE PLACE WITHIN THREE DAYS AFTER THE INITIAL HEARING IF THE DEFENDANT REMAINS IN CUSTODY, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, UNLESS GOOD CAUSE IS SHOWN TO THE COURT FOR ADDITIONAL TIME, OR THE PARTIES AGREE TO ADDITIONAL TIME.
- (2) A DEFENDANT WHO IS UNABLE TO POST A MONETARY CONDITION OF BOND HAS SCHEDULING PRECEDENCE OVER ALL OTHER MATTERS FOR PURPOSES OF LITIGATED HEARINGS AND TRIALS, SUBJECT TO THE PROVISIONS OF SECTIONS 18-3-411 (4) AND 18 SECTION 18-1-405.

**16-4-109. Reconsideration and modification of conditions of release – Hearing – Violation of conditions.**

- (1) THE DEFENDANT, THE PROSECUTING ATTORNEY, THE PRETRIAL SERVICES PROGRAM, OR THE BONDING AND RELEASE COMMISSIONER, MAY ASK FOR THE RECONSIDERATION AND MODIFICATION OF ANY MONETARY OR NONMONETARY CONDITION OF RELEASE IF NEW INFORMATION IS DISCOVERED THAT WAS NOT PRESENTED AT THE TIME OF THE PRIOR DECISION REGARDING THE TYPE OF BOND AND CONDITIONS OF RELEASE, OR IF CIRCUMSTANCES HAVE CHANGED SINCE THE COURT MADE THE PRIOR DECISION AND THIS NEW INFORMATION OR CHANGE IN CIRCUMSTANCES HAS A BEARING ON WHETHER THE TYPE OF BOND AND CONDITIONS OF RELEASE ARE STILL REASONABLE AND NECESSARY PURSUANT TO THE PROVISIONS OF 16-4-104, 104.5 AND 105.
- (2) REQUESTS FOR RECONSIDERATION OR MODIFICATION OF A MONETARY OR NONMONETARY CONDITION OF RELEASE MAY, IN THE COURT'S DISCRETION, BE MADE ORALLY OR IN WRITING WITH REASONABLE NOTICE TO THE OPPOSING PARTY; EXCEPT THAT, IF THE CASE ALLEGES A CRIME AS DEFINED IN SECTION 24-4.1-302, THE DEFENDANT'S REQUEST FOR RECONSIDERATION MUST BE IN WRITING, UNLESS THE DISTRICT ATTORNEY CONSENTS TO AN ORAL MOTION. UNLESS THE COURT SUMMARILY DENIES THE REQUEST, THE COURT SHALL GIVE THE OPPOSING PARTY UP TO 7 DAYS TO RESPOND TO A REQUEST FOR RECONSIDERATION, IF THE OPPOSING PARTY REQUESTS TIME TO RESPOND. THE COURT MAY RULE ON THE BASIS OF WRITTEN PLEADINGS OR MAY REQUIRE A HEARING ON THE MATTER. THE COURT SHALL RULE ON ANY REQUEST FOR RECONSIDERATION WITHIN 14 DAYS AFTER THE REQUEST IS MADE STATING ON THE RECORD, OR IN WRITING, THE REASONS FOR ANY DENIAL OF THE REQUEST AND WHY ANY MONETARY OR NONMONETARY CONDITION IS REASONABLE AND NECESSARY AND CONSISTENT WITH THE MANDATES OF THIS ARTICLE 4. THE COURT MAY DENY SUBSEQUENT REQUESTS FOR RECONSIDERATION UNLESS GOOD CAUSE IS SHOWN AND A GOOD FAITH REPRESENTATION IS MADE THAT THERE IS NEW AND RELEVANT INFORMATION, OR CHANGED CIRCUMSTANCES, THAT SUPPORT A MODIFICATION OF THE CONDITIONS OF BOND.
- (3) NOTWITHSTANDING THE PROVISIONS IN PARAGRAPH (2), WHEN THE DEFENDANT REMAINS IN CUSTODY DUE TO THE INABILITY TO POST A MONETARY CONDITION OF RELEASE AND THE DEFENDANT REQUESTS A HEARING TO RECONSIDER THE MONETARY CONDITION OF RELEASE, THE COURT SHALL GRANT THE DEFENDANT'S REQUEST FOR A HEARING. UNLESS OTHERWISE AGREED TO

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BY THE PARTIES, OR FOR OTHER GOOD CAUSE SHOWN, THE HEARING SHALL BE HELD AS SOON AS PRACTICABLE BUT NOT MORE THAN 3 WORKING DAYS AFTER THE MOTION IS FILED OR THE ORAL REQUEST FOR RECONSIDERATION IS MADE IN COURT. THE COURT SHALL MAKE A DETERMINATION REGARDING THE REASONS FOR THE MONETARY CONDITION AND THE REASONABLENESS OF THE MONETARY CONDITION SET BY THE COURT. IF THE COURT DOES NOT GRANT THE RECONSIDERATION OF THE MONETARY CONDITION CONSISTENT WITH THE REQUEST OF THE DEFENDANT, THE COURT SHALL STATE WHY THE COURT DID NOT GRANT THE REQUEST AND WHY THE MONETARY CONDITION OF BOND AS SET BY THE COURT IS NECESSARY AND CONSISTENT WITH THE MANDATES OF THIS ARTICLE 4. THE REASONS SHALL BE SPECIFIED ON THE RECORD OR IN WRITING IN ORDER THAT THE DEFENDANT MAY EXERCISE HIS OR HER RIGHT TO APPEAL PURSUANT TO SECTION 16-4-204, OR ANY OTHER AVAILABLE APPELLATE REMEDIES. THE DEFENDANT MAY EXERCISE THIS RIGHT TO A RECONSIDERATION HEARING PURSUANT TO THIS SECTION ONCE DURING THE PENDENCY OF THE CASE. SUBSEQUENT REQUESTS TO RECONSIDER A MONETARY CONDITION OF BOND MAY BE MADE PURSUANT TO THE PROVISIONS OF PARAGRAPHS (1) AND (2) OF THIS SECTION.

- (4) UPON A MOTION FROM THE DISTRICT ATTORNEY, OR A VERIFIED APPLICATION FROM THE DISTRICT ATTORNEY, PRETRIAL SERVICES PROGRAM OR A BONDING AND RELEASE COMMISSIONER STATING FACTS OR CIRCUMSTANCES CONSTITUTING A VIOLATION OR A THREATENED VIOLATION OF ANY OF THE CONDITIONS OF RELEASE THAT CREATES A SUBSTANTIAL RISK OF DANGER TO THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY, A SUBSTANTIAL RISK THAT THE PERSON WILL ATTEMPT TO FLEE PROSECUTION, A SUBSTANTIAL RISK THAT THE PERSON WILL ATTEMPT TO OBSTRUCT OR OTHERWISE WILLFULLY AVOID THE CRIMINAL JUSTICE PROCESS. THE COURT MAY ISSUE A WARRANT COMMANDING ANY PEACE OFFICER TO BRING THE DEFENDANT WITHOUT UNNECESSARY DELAY BEFORE THE COURT FOR A HEARING ON THE MATTERS SET FORTH IN THE MOTION OR APPLICATION. A WARRANT PURSUANT TO THIS SUBSECTION DOES NOT REVOKE THE BOND. UPON ISSUANCE OF THE WARRANT, THE PRETRIAL SERVICES PROGRAM OR THE BONDING AND RELEASE COMMISSIONER SHALL NOTIFY THE BAIL BOND AGENT OF RECORD BY ELECTRONIC MAIL TO THE AGENT IF AVAILABLE WITHIN TWENTY-FOUR HOURS OR BY CERTIFIED MAIL NOT MORE THAN FOURTEEN DAYS AFTER THE WARRANT IS ISSUED. AT THE CONCLUSION OF THE HEARING, THE COURT MAY ENTER AN ORDER AUTHORIZED BY SUBSECTION (5) OF THIS SECTION. IF A PRETRIAL SERVICES PROGRAM OR A BONDING AND RELEASE COMMISSIONER FILES A MOTION OR APPLICATION FOR A WARRANT AND HEARING PURSUANT TO THIS SUBSECTION (4), THEY SHALL NOTIFY THE DISTRICT ATTORNEY FOR THE JURISDICTION IN WHICH THE MOTION OR APPLICATION IS MADE OF THE MOTION OR APPLICATION WITHIN TWENTY-FOUR HOURS FOLLOWING THE FILING OF THE MOTION OR APPLICATION.
- (5) IF THE COURT, AFTER ADMISSION FROM THE DEFENDANT, OR AFTER A HEARING, DETERMINES THAT THE DEFENDANT VIOLATED A CONDITION OF RELEASE, THE COURT MAY;
- (a) CONTINUE THE BOND AND CONDITIONS OF RELEASE AFTER A DETERMINATION THAT NO FURTHER ACTION BY THE COURT WITH RESPECT TO THE TYPE OF BOND AND THE CONDITIONS OF RELEASE IS WARRANTED; OR
  - (b) MODIFY THE NONMONETARY CONDITIONS OF RELEASE TO INCLUDE ADDITIONAL OR CHANGED LEAST RESTRICTIVE NONMONETARY CONDITION PURSUANT TO 16-4-105; OR



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- (c) REVOKE THE BOND AND SET A NEW MONETARY CONDITION PURSUANT TO 16-4-104.5 WITH NONMONETARY CONDITIONS OF RELEASE PURSUANT TO 16-4-105; OR
- (d) CONTINUE THE BOND AND CONDITIONS OF RELEASE AFTER A TEMPORARY SANCTION OF UP TO 72 HOURS IN CUSTODY WHEN THE DEFENDANT ADMITS TO A VIOLATION OF CONDITIONS OF RELEASE AND AGREES TO A SHORT- TERM SANCTION.
- (e) NOTWITHSTANDING THE PROVISIONS IN PARAGRAPH (4) AND (5), WHEN THE VIOLATION OF THE CONDITIONS OF RELEASE INVOLVES REPEATED USE OF PROHIBITED SUBSTANCES OR REPEATED VIOLATIONS OF MONITORED SOBRIETY, AND THE BEHAVIOR HAS BEEN DETERMINED TO CREATE SUBSTANTIAL RISK OF FLIGHT OR A RISK TO THE PHYSICAL SAFETY OF A PERSON OR PERSONS OTHER THAN THE DEFENDANT, THE COURT MAY, IF THE DEFENDANT CONSENTS, CONTINUE THE ORIGINAL BOND AND CONDITIONS OF RELEASE AND IMPOSE A TEMPORARY SANCTION OF UP TO 72 HOURS IN CUSTODY AS PROVIDED IN PARAGRAPH (6)(d). AS AN ALTERNATIVE, IF THE DEFENDANT CONSENTS, THE COURT MAY REFER THE PERSON FOR TREATMENT SERVICES AS A CONDITION OF RELEASE. ONLY WHEN THE DEFENDANT REFUSES INTERMEDIATE SANCTIONS AS DESCRIBED ABOVE MAY THE COURT REVOKE THE BOND AND SET A NEW BOND PURSUANT TO 16-4-104.5 WITH CONDITIONS OF RELEASE PURSUANT TO 16-4-105.
- (f) THE DISTRICT ATTORNEY AND THE DEFENDANT WITH HIS OR HER ATTORNEY HAS THE RIGHT TO APPEAR AT ALL HEARINGS REGARDING MODIFICATION OF THE TYPE OF BOND AND CONDITIONS OF RELEASE AND MAY ADVISE THE COURT ON ALL PERTINENT MATTERS DURING THE HEARING.

**16-4-204. Appellate review of terms and conditions of bail or appeal bond.**

- (1) AFTER A RECONSIDERATION HEARING OR A DENIAL OF RECONSIDERATION OF CONDITIONS PURSUANT TO THE PROVISIONS OF 16-4-109 OR ENTRY OF AN ORDER PURSUANT TO 16-4-201, THE DEFENDANT OR THE PROSECUTING ATTORNEY MAY SEEK REVIEW OF THE COURT'S ORDER BY FILING A PETITION FOR REVIEW IN THE APPELLATE COURT.
- (2) THE PETITION SHALL BE IN WRITING, SHALL BE SERVED AS PROVIDED BY COURT RULE FOR SERVICE OF MOTIONS, AND SHALL HAVE APPENDED THERETO A TRANSCRIPT OF THE HEARING HELD PURSUANT TO SECTION 16-4-109 OR 16-4-203, UNLESS THE TRANSCRIPT CAN NOT BE OBTAINED WITHIN THREE DAYS AFTER PARTY REQUESTS SUCH TRANSCRIPT, EXCLUDING SATURDAYS, SUNDAYS AND LEGAL HOLIDAYS. IF THE TRANSCRIPT CANNOT BE OBTAINED WITHIN THREE DAYS, AN AUDIO RECORDING OF ALL RELEVANT BAIL HEARINGS MAY BE PROVIDED FOR APPELLATE REVIEW IN LIEU OF THE TRANSCRIPTS AND THE TRANSCRIPT SHALL BE FILED WITH THE APPELLATE COURT AS SOON AS IT IS AVAILABLE.
- (3) THE OPPOSING PARTY MAY FILE A RESPONSE TO THE PETITION WITHIN SEVEN DAYS, UNLESS ADDITIONAL TIME IS PROVIDED BY THE COURT FOR GOOD CAUSE. FURTHER BRIEFING MAY BE ALLOWED BY THE COURT ON AN EXPEDITED BASIS.
- (4) THE APPELLATE COURT SHALL ISSUE AN ORDER WITH WRITTEN FINDINGS AND CONCLUSIONS ADDRESSING THE FACTUAL AND LEGAL ISSUES RAISED AS SOON AS PRACTICABLE, BUT NOT LATER THAN 14 DAYS FROM THE CONCLUSION OF THE BRIEFING OF THE PARTIES. THE COURT SHALL

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REVIEW ISSUES OF CONSTITUTIONAL LAW AND STATUTORY INTERPRETATION DE NOVO, AND SHALL REVIEW FACTUAL FINDINGS FOR AN ABUSE OF DISCRETION.

- (5) AFTER REVIEW OF THE PETITION, THE APPELLATE COURT MAY:
- (a) REMAND THE PETITION FOR A FURTHER EXPEDITED HEARING IN THE TRIAL COURT WITHIN 7 DAYS IF IT DETERMINES THAT THE RECORD DOES NOT SUFFICIENTLY SPECIFY THE FINDINGS UPON WHICH THE TRIAL COURT ENTERED THE ORDER; OR
  - (b) ORDER THE TRIAL COURT TO MODIFY THE CONDITIONS OF RELEASE OR APPEAL BOND; OR
  - (c) ORDER THE TRIAL COURT TO MODIFY THE CONDITIONS OF RELEASE OR APPEAL BOND AND REMAND FOR A FURTHER HEARING ON ADDITIONAL CONDITIONS OF RELEASE OR APPEAL BOND; OR
  - (d) DISMISS THE PETITION WITH WRITTEN FINDINGS STATING THE REASONS FOR THE DISMISSAL AND IF CONSTITUTIONAL ISSUES ARE RAISED, ADDRESSING THE CONSTITUTIONAL ISSUES IN THE WRITTEN ORDER.
  - (e) ALL QUESTIONS OF CONSTITUTIONAL LAW AND STATUTORY INTERPRETATION SHALL BE REVIEWED DE NOVO BY THE APPELLATE COURT.
- (6) A PETITION FOR REVIEW OF BOND CONDITIONS IN AN APPELLATE COURT SHALL NOT STAY THE UNDERLYING CRIMINAL PROCEEDINGS AND THE DEFENDANT MAY REQUEST ADDITIONAL RECONSIDERATION OF CONDITIONS OF RELEASE PURSUANT TO THE PROVISIONS OF 16-4-109 DURING THE PENDENCY OF THE APPELLATE PROCESS.
- (7) NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO DENY ANY PARTY THE RIGHTS SECURED BY SECTION 21 OF ARTICLE II OF THE COLORADO CONSTITUTION.

**16-4-207. Contents of a summons – Court reminders.**

- (1) If a summons is issued in lieu of a warrant under this section:
- (a) It shall be in writing.
  - (b) It shall state the name of the person summoned and his address.
  - (c) It shall identify the nature of the offense.
  - (d) It shall state the date when issued and the county where issued.
  - (e) It shall be signed by the judge or clerk of the court with the title of his office or by the law enforcement officer who issued the summons.
  - (f) It shall command the person to appear before the court at a certain time and place.
  - (g) It shall advise the person summoned that the person can elect to provide a mobile telephone number that will solely be used to provide text message reminders of future court dates and unplanned court closures, and provide an opportunity for the person to provide a mobile telephone number for that purpose.

*[Editor's note: This subsection (2)(g) is effective July 1, 2020.]*

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- (2) A summons issued under this section may be served in the same manner as the summons in a civil action or by mailing it to the defendant's last-known address by certified mail with return receipt requested not less than fourteen days prior to the time the defendant is requested to appear. Service by mail is complete upon the return of the receipt signed by the defendant.
- (3) If any person summoned under this section fails to appear as commanded by the summons, the court shall forthwith issue a warrant for his arrest.

**16-5-206. Summons in lieu of warrant or arrest – Mandatory summons – Exceptions - Presumptions.**

- (1) A SUMMONS SHALL BE ISSUED FOR ALL TRAFFIC OFFENSES, PETTY OFFENSES AND ANY COMPARABLE MUNICIPAL OFFENSES FOR WHICH MONETARY CONDITIONS OF RELEASE ARE PROHIBITED PURSUANT TO §16-4-113(2), C.R.S., UNLESS THE LOCATION OF THE PERSON IS UNKNOWN AND THE ISSUANCE OF AN ARREST WARRANT IS NECESSARY IN ORDER TO SUBJECT THE PERSON TO THE JURISDICTION OF THE COURT.
- (2) A SUMMONS SHALL BE ISSUED FOR MISDEMEANOR OFFENSES AND MUNICIPAL OFFENSES FOR WHICH THERE IS A COMPARABLE STATE MISDEMEANOR CHARGE UNLESS CERTAIN EXCEPTIONS EXIST. THOSE EXCEPTIONS ARE:
  - (a) ARREST IS MANDATORY PURSUANT TO THE MANDATES OF ANOTHER STATUTORY PROVISION; OR
  - (b) THE OFFENSE IS DEFINED AS A “CRIME” IN §24-4.1-302(1), C.R.S., FOR PURPOSES OF THE RIGHTS OF VICTIMS; OR
  - (c) THE FACTS AND CIRCUMSTANCES INDICATE A SUBSTANTIAL RISK THAT THE PERSON WILL ATTEMPT TO FLEE PROSECUTION IF NOT ARRESTED; OR
  - (d) THE FACTS AND CIRCUMSTANCES INDICATE AN IMMINENT AND SUBSTANTIAL RISK THAT A VICTIM, WITNESS, OR ANY PERSON OTHER THAN THE DEFENDANT MAY BE HARMED IF THE PERSON IS NOT ARRESTED; OR
  - (e) THERE IS PROBABLE CAUSE THAT THE PERSON COMMITTED AN OFFENSE UNDER §42-4-1301, C.R.S.; OR
  - (f) THERE IS PROBABLE CAUSE THAT THE PERSON USED OR POSSESSED A DEADLY WEAPON AS DEFINED IN §18-1-901(3)(E), C.R.S., DURING THE COMMISSION OF THE OFFENSE; OR
  - (g) THE LOCATION OF THE PERSON IS UNKNOWN AND THE ISSUANCE OF AN ARREST WARRANT IS NECESSARY IN ORDER TO SUBJECT THE PERSON TO THE JURISDICTION OF THE COURT.
- (3) FOR FELONY OFFENSES, UNLESS THERE IS A STATUTORY PROVISION MANDATING ARREST, LAW ENFORCEMENT OFFICERS MAY DELAY THE ARREST OF ANY PERSON PENDING A FILING DECISION BY THE DISTRICT ATTORNEY. AFTER THE DISTRICT ATTORNEY HAS DETERMINED THAT A FELONY CHARGE WILL BE FILED, THE DISTRICT ATTORNEY MAY REQUEST THAT THE COURT ISSUE A SUMMONS OR MAY REQUEST A WARRANT BE ISSUED FOR THE PERSON’S ARREST. UNLESS THERE IS A STATUTORY PROVISION MANDATING ARREST, LAW ENFORCEMENT AGENCIES AND OFFICERS

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HAVE THE AUTHORITY TO ISSUE A SUMMONS FOR A FELONY OFFENSE PURSUANT TO LOCAL POLICY AND WITH THE CONSENT OF THE DISTRICT ATTORNEY.

- (4) FOR CLASS 4, 5 AND 6 FELONY OFFENSES AND LEVEL 3 AND 4 DRUG FELONY OFFENSES, THERE SHALL BE A PREFERENCE AND A PRESUMPTION IN FAVOR OF A SUMMONS INSTEAD OF AN ARREST OR ARREST WARRANT UNLESS CERTAIN EXCEPTIONS EXIST. THOSE EXCEPTIONS ARE:
- (a) ARREST IS MANDATORY PURSUANT TO THE MANDATES OF ANY STATUTORY PROVISION
  - (b) THE OFFENSE IS ENUMERATED AS A CRIME IN § 24-4.1-302(1), C.R.S., FOR PURPOSES OF THE RIGHTS OF VICTIMS; OR
  - (c) THE FACTS AND CIRCUMSTANCES INDICATE A SUBSTANTIAL RISK THAT THE PERSON WILL ATTEMPT TO FLEE PROSECUTION IF THE PERSON IS NOT ARRESTED; OR
  - (d) THE FACTS AND CIRCUMSTANCES INDICATE AN IMMINENT AND SUBSTANTIAL RISK THAT A VICTIM, WITNESS, OR ANY PERSON OTHER THAN THE DEFENDANT MAY BE HARMED IF THE PERSON IS NOT ARRESTED; OR
  - (e) THERE IS PROBABLE CAUSE THAT THE PERSON COMMITTED AN OFFENSE UNDER 42-4-1301, C.R.S., OR
  - (f) THERE IS PROBABLE CAUSE THAT THE PERSON USED OR POSSESSED A DEADLY WEAPON AS DEFINED IN 18-1-901(3)(E), C.R.S., DURING THE COMMISSION OF THE OFFENSE; OR
  - (g) THE LOCATION OF THE PERSON IS UNKNOWN AND THE ISSUANCE OF AN ARREST WARRANT IS NECESSARY IN ORDER TO SUBJECT THE PERSON TO THE JURISDICTION OF THE COURT.

**18-8-212. Violation of bail bond conditions.**

- (1) A PERSON WHO IS RELEASED ON BOND AND IS CHARGED WITH ANY FELONY ARISING FROM THE CONDUCT FOR WHICH HE WAS ARRESTED, COMMITS A CLASS 6 FELONY IF HE KNOWINGLY FAILS TO APPEAR IN THE CASE WITH THE INTENT TO AVOID PROSECUTION.
- (2) A PERSON WHO IS RELEASED ON BOND, AND IS CHARGED WITH ANY FELONY OR MISDEMEANOR ARISING FROM THE CONDUCT FOR WHICH HE WAS ARRESTED, COMMITS A CLASS 3 MISDEMEANOR IF HE INTENTIONALLY FAILS TO APPEAR IN THE CASE FOR ANY PROCEEDINGS FOR WHICH VICTIMS OR WITNESSES HAVE APPEARED IN COURT.
- (3) NO VIOLATION OF BOND APPEARANCE CONDITIONS MAY BE BROUGHT AGAINST ANY PERSON SUBJECT TO THE PROVISIONS OF 16-4-113(2).

**18-1-1001. Protection order against defendant.**

- (1) There is hereby created a mandatory protection order against any person charged with a violation of any of the provisions of this title, which order shall remain in effect from the time that the person is advised of his or her rights at arraignment or the person's first appearance before the court and informed of such order until final disposition of the action. Such order shall restrain the person charged from harassing, molesting, intimidating, retaliating against, or tampering with any witness

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to or victim of the acts charged. The protection order issued pursuant to this section shall be on a standardized form prescribed by the judicial department and a copy shall be provided to the protected parties.

- (2) At the time of arraignment or the person's first appearance before the court, the court shall inform the defendant of the protection order effective pursuant to this section and shall inform the defendant that a violation of such order is punishable by contempt.
- (3) (a) Nothing in this section precludes the defendant from applying to the court at any time for modification or dismissal of the protection order issued pursuant to this section or the district attorney from applying to the court at any time for further orders, additional provisions under the protection order, or modification or dismissal of the same. The trial court retains jurisdiction to enforce, modify, or dismiss the protection order until final disposition of the action. Upon motion of the district attorney or on the court's own motion for the protection of the alleged victim or witness, the court may, in cases involving domestic violence as defined in section 18-6-800.3 (1) and cases involving crimes listed in section 24-4.1-302, except those listed in subsections (1)(cc.5) and (1)(cc.6) of that section, enter any of the following further orders against the defendant:
- (I) An order to vacate or stay away from the home of the alleged victim or witness and to stay away from any other location where the victim or witness is likely to be found;
  - (II) An order to refrain from contact or direct or indirect communication with the alleged victim or witness;
  - (III) An order prohibiting possession or control of firearms or other weapons;
  - (IV) An order prohibiting possession or consumption of alcohol or controlled substances;
  - (V) An order prohibiting the taking, transferring, concealing, harming, disposing of, or threatening to harm an animal owned, possessed, leased, kept, or held by an alleged victim or witness; and
  - (VI) Any other order the court deems appropriate to protect the safety of the alleged victim or witness.
- (b) ANY FURTHER ORDERS ISSUED PURSUANT TO SUBSECTION (3)(a) SHALL BE FOR THE PROTECTION OF A VICTIM OR WITNESS AND NOT FOR THE PROTECTION OF THE DEFENDANT, INCLUDING FOR THE PROTECTION OF THE DEFENDANT FROM THE USE OF ALCOHOL OR OTHER SUBSTANCES.
- (c) ANY FURTHER ORDERS ISSUED PURSUANT TO SUBSECTION (3) THAT ARE NOT MANDATORY SHALL BE SUPPORTED SHALL BE NECESSARY TO REASONABLE ENSURE THE SAFETY OF ANY VICTIM OR WITNESS AND SHALL INCLUDE THE INPUT OF THE VICTIM OR WITNESS, WHEN AVAILABLE.

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**PRETRIAL RELEASE TASK FORCE**

**RECOMMENDATION FY20-PR #03: APPENDIX - Draft Statutory Language**

PRESENTED TO THE COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE

January 10, 2020

**18-6-803.5. Crime of violation of a protection order - Penalty - Peace officers' duties – Definitions.**

(1.5) As used in this section:

- (a) "Protected person" means the person or persons identified in the protection order as the person or persons for whose benefit the protection order was issued. A PROTECTED PERSON AS USED IN THIS SECTION SHALL NOT INCLUDE THE DEFENDANT.

**13-3-117. TeleJustice Program Fund.**

- (1) ON AND AFTER APRIL 1, 2021, THE OFFICE OF THE STATE COURT ADMINISTRATOR SHALL OPERATE A PROGRAM, REFERRED TO IN THIS SECTION AS THE "TELEJUSTICE PROGRAM", THAT IMPLEMENTS TELEPHONIC OR INTERNET-BASED NETWORKING SOFTWARE TO LET MUNICIPAL COURTS, COUNTY COURTS, AND DISTRICT COURTS OF THE STATE CONDUCT HEARINGS AND OTHER JUDICIAL PROCEDURES WITH REMOTE PARTICIPANTS. THE TELEJUSTICE PROGRAM MUST PROVIDE A TWO-WAY AUDIO AND VIDEO CONNECTION THAT ALLOWS PARTICIPANTS TO SEE AND COMMUNICATE VERBALLY WITH EACH OTHER. THE PURPOSE OF THE TELEJUSTICE PROGRAM IS TO ALLOW FOR DEFENDANTS TO APPEAR AT CERTAIN COURT PROCEEDINGS VIA THE USE OF INTERACTIVE AUDIOVISUAL DEVICES, SUBJECT TO THE PROVISIONS OF THE COLORADO CONSTITUTION AND THE COLORADO RULES OF CRIMINAL PROCEDURE. IT IS PRESUMED THAT THE PHYSICAL PRESENCE OF THE DEFENDANT IS REQUIRED AT ALL COURT PROCEEDINGS EXCEPT IN THOSE LIMITED CIRCUMSTANCES WHEN THE RIGHTS OF THE DEFENDANT AND THE FAIR ADMINISTRATION OF JUSTICE WILL NOT BE COMPROMISED BY THE USE OF AN INTERACTIVE AUDIOVISUAL DEVICE.
- (2) (a) THE TELEJUSTICE PROGRAM IS SUBJECT TO APPROPRIATION BY THE GENERAL ASSEMBLY AND THE STATE COURT ADMINISTRATOR SHALL EXPEND MONEY APPROPRIATED BY THE GENERAL ASSEMBLY FOR THE PURPOSES DESCRIBED IN THIS SECTION. THE MUNICIPALITIES OF EACH MUNICIPAL COURT, IF THEY CHOOSE TO PARTICIPATE IN THE TELEJUSTICE PROGRAM AT THEIR DISCRETION, ARE RESPONSIBLE FOR THE COSTS OF INSTALLING AND MAINTAINING SOFTWARE AND EQUIPMENT COMPATIBLE WITH THE TELEPHONIC OR INTERNET-BASED SOFTWARE USED BY THE COUNTY COURTS AND DISTRICT COURTS.
- (3) (a) IN DETERMINING WHETHER A PROCEEDING IS ONE AT WHICH THE USE OF AN INTERACTIVE AUDIOVISUAL DEVICE IS REASONABLE AND APPROPRIATE IN LIGHT OF THE PRESUMPTION THAT THE DEFENDANT SHOULD BE PHYSICALLY PRESENT AT COURT HEARINGS, THE COURT SHALL:
  - (i) COMPLY WITH ANY RELEVANT RULE OF CRIMINAL PROCEDURE AND ANY CONSTITUTIONAL LIMITATIONS; AND
  - (ii) ENSURE THAT DEFENSE COUNSEL HAS AN OPPORTUNITY TO BE HEARD REGARDING THE USE OF AN INTERACTIVE AUDIOVISUAL DEVICE, IF THE DEFENDANT OBJECTS.(b) IF AN INTERACTIVE AUDIOVISUAL DEVICE WILL BE USED, THE COURT SHALL ALLOW COUNSEL SUFFICIENT OPPORTUNITY TO CONSULT WITH THE DEFENDANT PRIOR TO ANY HEARING.
- (4) NOTHING IN THIS SECTION REQUIRES THE DIVISION OF YOUTH SERVICES WITHIN THE DEPARTMENT OF HUMAN SERVICES TO UTILIZE THE TELEJUSTICE PROGRAM.

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**16-4-xxx. [Section to be determined by drafter] Comprehensive pretrial stakeholder training.**

- (1) THE JUDICIAL DEPARTMENT, THE OFFICE OF THE PUBLIC DEFENDER, THE COLORADO DISTRICT ATTORNEYS' COUNCIL, THE OFFICE OF THE ATTORNEY GENERAL, AND THE OFFICE OF ALTERNATE DEFENSE COUNSEL SHALL PROVIDE OR MAKE AVAILABLE TRAINING TO ATTORNEYS, JUDGES, MAGISTRATES AND OTHER EMPLOYEES, CONTRACTORS OR STAFF CONCERNING THE PRETRIAL PROCESS, THE CHANGES IN THE PRETRIAL PROCESS AS PROVIDED IN RECENT LAW CHANGES, AS WELL AS THE EMPIRICAL RESEARCH AND LAW SUPPORTING BEST PRACTICES IN PRETRIAL JUSTICE. EACH DEPARTMENT, AGENCY OR ORGANIZATION SHALL DEVELOP AND DELIVER IN DEPTH STATEWIDE TRAINING TO BE LOCALLY DELIVERED, TO THE EXTENT POSSIBLE, AND SHALL ALSO WORK IN COOPERATION WITH EACH OTHER TO DELIVER PRETRIAL JUSTICE TRAINING IN LOCAL JURISDICTIONS THAT IS CONSISTENT WITH BEST PRACTICES IN PRETRIAL JUSTICE.
- (2) EACH AGENCY SHALL REPORT ANNUALLY TO THE JUDICIARY COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND SENATE, OR TO ANY SUCCESSOR COMMITTEES, INFORMATION PROVIDING THE FOLLOWING INFORMATION:
  - (a) THE ENTIRE TRAINING CURRICULUM AS DEVELOPED BY THE DEPARTMENT OR AGENCIES AND A COMPLETE DESCRIPTION OF HOW THE TRAINING WAS DELIVERED STATEWIDE AND EACH JURISDICTION;
  - (b) THE NUMBER OF HOURS DEDICATED TO THE TRAINING BY THE STATE DEPARTMENT, STATE AGENCY OR DISTRICT ATTORNEY'S OFFICE AND ADDITIONALLY, THE NUMBER OF HOURS OF TRAINING PROVIDED OR SUPPORTED BY THE AGENCY OR OFFICE WITHIN EACH JURISDICTION;
  - (c) THE NUMBER OF PERSONS WHO ENGAGED IN THE TRAINING IN EACH JURISDICTION OR OFFICE, SPECIFICALLY THE NUMBER OF JUDGES, JUDICIAL OFFICERS, DISTRICT ATTORNEYS, ATTORNEYS GENERAL AND CRIMINAL DEFENSE ATTORNEYS;
  - (d) THE PERCENTAGE OF THE TOTAL NUMBER OF JUDGES, JUDICIAL OFFICERS, DISTRICT ATTORNEYS, ATTORNEYS GENERAL AND CRIMINAL DEFENSE ATTORNEYS IN THAT DEPARTMENT, AGENCY OR OFFICE THAT PARTICIPATED IN THE TRAINING;
  - (e) A DESCRIPTION OF HOW THE JURISDICTION HAS COORDINATED AND JOINTLY TRAINED WITH OTHER STAKEHOLDERS AND ENTITIES, INCLUDING PRETRIAL SERVICE PROGRAMS, TO ENSURE THAT PRETRIAL JUSTICE BEST PRACTICES ARE DELIVERED EFFECTIVELY AND EFFICIENTLY.







# CCJJ Annual Report | 2020

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