



AN OVERVIEW OF COLORADO'S PRETRIAL RELEASE REFORMS

Most criminal defendants have a right to be released prior to trial, with exceptions made only for those accused of the most serious and dangerous crimes. Yet, many stay in jail because they can't meet conditions of release, which often are monetary. This has prompted legislative interest in how to increase public safety, reduce flight risk, and make the pretrial release system more efficient and effective.

Courts determine conditions of release based on safety and flight risk. However, judges usually have little information about the risks defendants pose to guide these pretrial decisions. That is changing in a growing number of states. Colorado is one of 11 states since 2012 to create or regulate the use of risk assessments in pretrial.

Colorado's Pretrial Reform

In 2007, the Colorado Commission on Criminal and Juvenile Justice (CCJJ) was created to engage "in a comprehensive, evidence-based analysis of the circumstances and characteristics of the offenders being sentenced to the department of corrections, the alternatives to incarceration, the effectiveness of prevention programs, and the effectiveness of the criminal code and sentencing laws in securing public safety."

The CCJJ first took up the issue of pretrial release in 2008 by issuing a set of recommendations for modification of the state's pretrial release laws. Parts of those recommendations were codified in 2009 by House Bill 1262 and in 2010 by House Bill 1215. In 2011, a bail subcommittee of the CCJJ was formed to examine evidence-based pretrial practices and continue the work that the Commission had started in 2008. The subcommittee consisted of judges, defense attorneys, prosecutors, law enforcement, a county commissioner, a victims' advocate, professional bail agents, a community corrections representative, and a representative of the state's pretrial services association. During the next year, the subcommittee met 11 times to review data and statistics, current law and practice, and stakeholder perspectives.

Out of this work, four recommendations were presented to the General Assembly in late 2012. The recommendations included adoption of standardized evidence-based decision making, reduction in the use of financial bond and bond schedules, expansion and improvement of pretrial approaches and opportunities, and standardization of jail data collection statewide. All but the jail data collection went on to become part of House Bill 1236 (2013) sponsored by then Speaker Pro Tem Claire Levy.

The law requires courts to use individualized, evidence-based decision making practices when setting bonds and other conditions of release. It presumes that all those in custody for bailable offenses be released under the “least-restrictive conditions,” while allowing conditions that address specific concerns. The law also allows those granted, but unable to pay, the financial bond, to ask the court seven days after the bond was set to reconsider requiring the monetary condition of release.

House Bill 1236 (2013)

Bail Eligibility: The new law defines several classifications of arrestees who can have their bail denied. This includes those arrested for a capital offense, for a crime of violence if the arrest occurred while released on probation, parole or bail for a previous charge, or after they have had two previous felony convictions for crimes of violence and for certain sexual assault and weapons crimes.

Bail Determination: The law creates a presumption that all defendants are eligible for release on the least-restrictive conditions. It also states that if a bond schedule is used, factors addressing the individual risk that a particular defendant poses must be considered and the bail decision cannot be based solely on the alleged offense. For certain misdemeanor arrestees, the law presumes release on personal recognizance.

Risk Assessment: The law requires, if practical, courts to consider results of an “empirically developed” risk assessment instrument to improve the effectiveness of release decisions.

Pretrial Services: The law allows a judge to have any bail-eligible defendant evaluated by a pretrial services program so that recommendations on appropriate release conditions can be made. It also requires that the chief judge in every judicial district consult annually with counties to develop pretrial services programs. The law similarly encourages counties to develop pretrial services pursuant to a plan established by a “community advisory board” and approved by the chief judge of the judicial district. All programs must meet standards set by the new law, and annual reports must be submitted to the judicial department.

Financial Bail: The law allows a defendant who cannot pay their financial bail seven days after it has been set, to request a hearing for reconsideration of the monetary conditions. For a change to be made, the person must present new evidence or evidence not fully considered by the court. The court must consider the results of any empirically developed risk assessment instrument in considering the request.

Commercial Bond: The law outlines procedures for bail bonding agents securing bonds with real property. The law also sets forfeiture procedures for commercial and non-commercial sureties.

For more information on the CCJJ Bail Subcommittee visit their website at:
<http://www.colorado.gov/cs/Satellite/CDPS-CCJJ/CBON/1251623050482>

More information on pretrial policy from all 50 states and D.C. is available on the NCSL pretrial release page at: <http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-policy.aspx>

