

Colorado Commission on  
Criminal & Juvenile Justice

2019 Annual Report

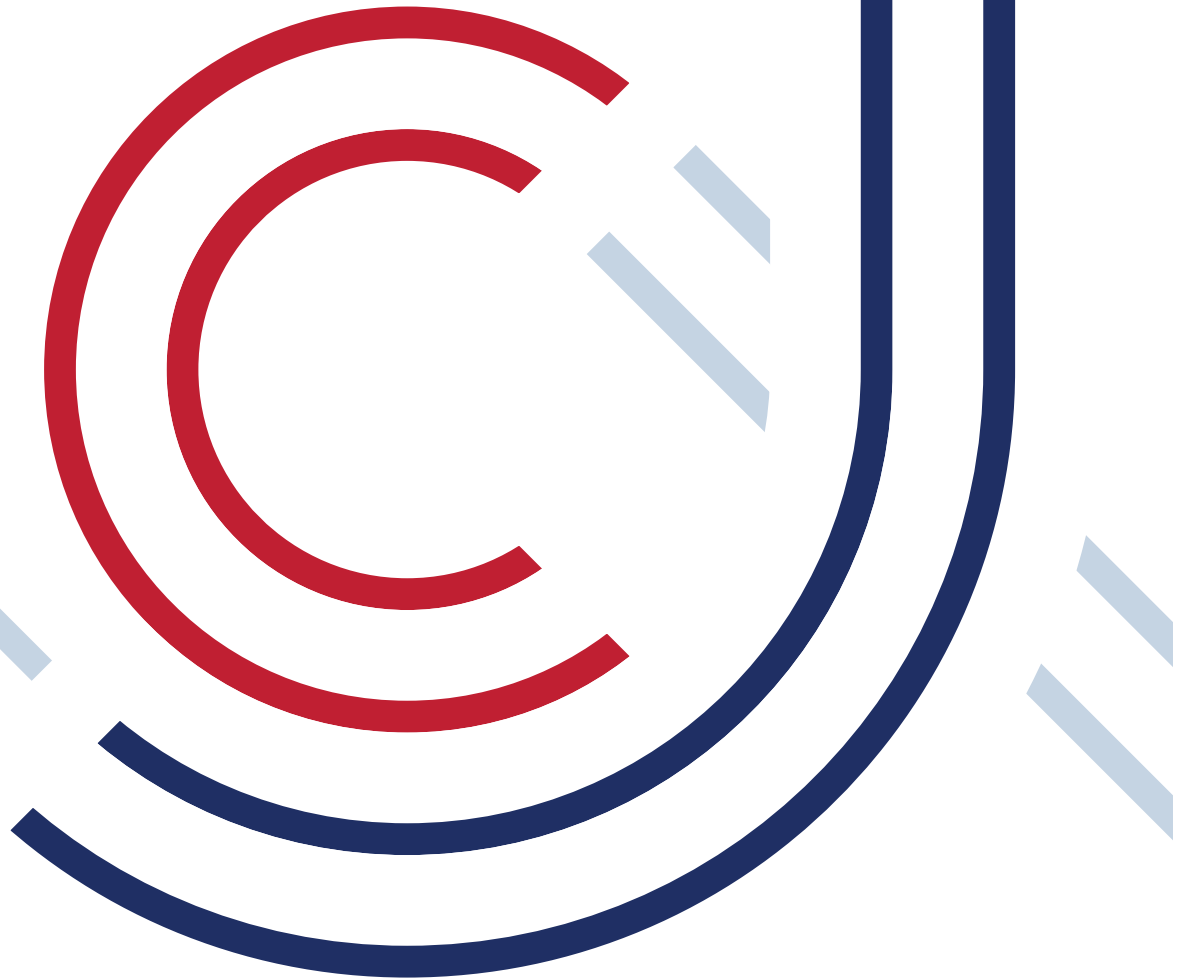


# CCJJ Annual Report | 2019

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(5)

Office of Research and Statistics / Kim English, Research Director  
Division of Criminal Justice / Joe Thome, Director  
Department of Public Safety / Stan Hilkey, Executive Director

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# Table of Contents

v	Acknowledgements
vii	Commission members
xi	Task force and committee members
xv	Commission staff
.....	
1	Section 1 <b>Introduction</b>
3	Section 2 <b>Legislative intent and membership</b>
5	Section 3 <b>Activities of the Commission</b>
15	Section 4 <b>Recommendations and outcomes</b>
63	Section 5 <b>Next steps</b>
.....	
65	Section 6 <b>Appendices</b>
67	Appendix A Crime and court case processing overview
73	Appendix B New study: Driving under the influence of drugs and alcohol in Colorado
79	Appendix C Pretrial services and assessments tools
83	Appendix D Money bond and pretrial release
87	Appendix E The Commission’s 2013 bond reform effort
91	Appendix F Mental health/behavioral health update
95	Appendix G Council of State Governments: Improving outcomes for youth
99	Appendix H Trends and issues in criminal justice
105	Appendix I Behavioral health efforts
.....	
<b>Tables:</b>	
2	Table 1.1 Bills related to Commission recommendations
29	Table 4.1 Colorado counties with or without pretrial services and/or assessment (October 2017)
39	Table 4.2. Colorado counties by A, B, C, D designation, with and without pretrial supervision services
.....	
<b>Figures:</b>	
9	Figure 3.1 Commission, task force and committee organizational chart



# Acknowledgements

Under the leadership of Chair Stan Hilkey and Interim Vice Chair Joe Thome, 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; Sheriff Joe Pelle, Mental Health/Jails Task Force chair, and Joe Thome and Jessica Jones, co-chairs of the Age of Delinquency Task Force. In addition, the Commission thanks Joe Thome who chaired the Abuse of Youth in Custody Subcommittee.

The Commission could not complete its work without the dedication of dozens 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 Public Defender, Bo Zeerip from the District Attorney's Office in the 21st Judicial District, Greg Mauro from Denver Community Corrections, and Abigail Tucker from the Community Reach Center.

Additionally, the Commission's Legislative Committee was quite active during the 2019 legislative session, and the Commission acknowledges the efforts of Stan Hilkey, Joe Thome, Joe Pelle, Tom Raynes, Janet Drake and Megan Ring.

The Commission thanks the leadership of the organizations of those who work on behalf of Commission initiatives for supporting these important activities.

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 2019.



# Commission members

## **Stan Hilkey**

*Chair*

Executive Director

Department of Public Safety

## **Douglas Wilson** (resigned July 2018)

*Vice Chair*

State Public Defender

## **Joe Thome**

*Interim Vice Chair*

Division of Criminal Justice

*Ex officio Member*

## **Chris Bachmeyer** (re-appointed May 2019)

District Court Judge, 1st Judicial District

Representing the Colorado State Judicial Branch

## **Jennifer Bradford** (resigned January 2019)

Metropolitan State University of Denver

Designee for the Executive Director of the

Department of Higher Education

## **Minna Castillo Cohen** (designated June 2019)

Director, Children, Youth & Families (CDHS)

Designee for the Executive Director of the

Department of Human Services

## **John Cooke**

State Senator, Senate District 13

Representing the State Legislature (R)

## **Cindy Cotten**

Coordinator, Youth Detention Continuum – 12th J.D.

Representing Juvenile Justice

## **Shawn Day** (appointed July 2018)

Aurora Municipal Judge

Representing Municipalities

## **Janet Drake** (designated January 2019)

Deputy, Criminal Justice Section,

Attorney General's Office

Designee for the Attorney General

## **Valarie Finks**

Victims Representative, 18th Judicial District

Representing Victim Rights Organizations

## **Tony Gherardini** (resigned January 2019)

Deputy Executive Director of Operations

Designee for the Executive Director of the

Department of Human Services

## **Julie Gonzales** (appointed 02/2019)

State Senator, Senate District 34

Representing the State Legislature (D)

## **Serena Gonzales-Gutierrez** (appointed 02/2019)

State Representative, House District 4

Representing the State Legislature (D)

## **Kristen Hilkey** (designated 09/2018)

Chair, Colorado State Board of Parole

Colorado State Board of Parole

## **Nancy Jackson** (appointed 07/2018)

Arapahoe County Commissioner

Representing Counties/County Commissioners



**Jessica Jones**

Private Defense Attorney  
At-large

**Daniel Kagan** (appointment expired  
December 2018)

State Senator, Senate District 26  
Representing the State Legislature (D)

**William Kilpatrick**

Chief, Golden Police Department  
Representing Chiefs of Police

**Richard Kornfeld** (appointed July 2018)

Recht/Kornfeld PC  
Representing Criminal Defense

**Cynthia Kowert** (designation expired  
December 2018)

Deputy, Criminal Justice Section  
Representing the Attorney General's Office

**Andrew Matson** (appointed February 2018)

Colorado CURE  
Representing Offenders

**Greg Mauro** (appointed May 2019)

Director, Denver Division of Community Corrections  
At Large

**Joe Morales** (designation expired August 2018)

Chairman, Colorado State Board of Parole  
Colorado State Board of Parole

**Angie Paccione** (designated January 2019)

Executive Director  
Department of Higher Education

**Joe Pelle**

Sheriff, Boulder County  
Representing Colorado Sheriffs

**Rick Raemisch** (designation expired  
December 2018)

Executive Director  
Department of Corrections

**Tom Raynes** (designated 07/2018)

CDAC Executive Director  
Representing the Colorado District Attorneys' Council

**Cliff Riedel** (designated by CDAC, February 2018)

District Attorney, 8th Judicial District  
Representing District Attorneys

**Megan Ring** (designated 08/2018)

State Public Defender  
Office of the Colorado State Public Defender

**Gretchen Russo** (designated 12/2018)

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

**Rose Rodriguez** (resigned January 2019)

Community Corrections  
At-large

**Joseph Salazar** (appointment expired  
December 2018)

State Representative, House District 31  
Representing the State Legislature (D)

**Lang Sias** (appointment expired December 2018)

State Representative, House District 27  
Representing the State Legislature (R)

**Matt Soper** (appointed June 2019)

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

**Jennifer Stith** (appointed July 2018)

Executive Director, WINGS Foundation  
Representing Victims/Survivors of Crime

**Glenn Tapia** (appointed July 2018)

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

**Ann Tapp** (appointed July 2018)

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

**Abigail Tucker** (appointed July 2018)  
Clinical Director (Intensive Services) –  
Community Reach Centers  
Representing Mental Health Treatment Providers

**Robert Werthwein** (designation expired May 2019)  
Children, Youth and Families, Director  
Designee for the Executive Director Department  
of Human Services

**Dean Williams** (designated January 2019)  
Executive Director  
Department of Corrections

**Meg Williams** (resigned August 2018)  
Vice-Chair, Juvenile Parole Board  
Designee for the Chair of the Juvenile Parole Board



# Task force and committee members

July 2018 - June 2019

## Age of Delinquency Task Force

<b>Name</b>	<b>Affiliation</b>
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 (J.D.)
David Bergman	Youthful Offender System, CO Department of Corrections
Audra Bishop	CO Department of Public Health and Environment
Jim Bullock	District Attorney's Office, 16th (J.D.)
Maureen Cain	Public Defender's Office
Shawn Cohn	Denver Juvenile Probation
Kelly Friesen	Grand County Juvenile Justice Department & Senate Bill 94, 14th (J.D.)
Bev Funaro	Victim Advocate
Tony Gherardini	CO Department of Human Services (CDHS)
Melanie Gilbert	Juvenile Court Magistrate, State Judicial Branch
Serena Gonzales-Gutierrez	State Representative, House District 4
Anders Jacobson	Division of Youth Services, CDHS
Dafna Michaelson Jenet	State Representative, House District 30
Cynthia Kowert	Attorney General's Office
Dan Makelky	Douglas County Department of Human Services
Gretchen Russo	CO Department of Human Services
Tariq Sheikh	District Attorney's Office, 17th (J.D.)
Sara Strufing	State Public Defender's Office
Meg Williams	Office of Adult and Juvenile Justice Assistance, Division of Criminal Justice

## Legislative Committee

<b>Name</b>	<b>Affiliation</b>
Stan Hilkey, <i>Chair</i>	Department of Public Safety
Janet Drake	Criminal Justice Division, Attorney General's Office
Joe Pelle	Sheriff's Department, Boulder County
Tom Raynes	CO District Attorneys' Council
Megan Ring	State Public Defender's Office
Joe Thome	Division of Criminal Justice

## Mental Health/Point of Contact through Jail Release Task Force

<b>Name</b>	<b>Affiliation</b>
Joe Pelle, <i>Chair</i>	Sheriff's Office, Boulder County
Chris Bachmeyer	District Court Judge, 1st Judicial District (J.D.)
Jamison Brown	CO Jail Association
John Cooke	State Senator, Senate District 13
Frank Cornelia	CO Behavioral Healthcare Council
Patrick Costigan	District Attorney's Office, 17th J.D.
Tina Gonzales	Colorado Health Partnerships
Cinthia Grant	AllHealth Network
Benjamin Harris	CO Department of Health Care Policy and Financing
Kristen Hilkey	State Board of Parole
Matthew Meyer	Mental Health Partners
Joe Morales	State Board of Parole
Norm Mueller	Criminal Defense Attorney
Megan Ring	CO State Public Defender
Jagruti Shah	Office of Behavioral Health, CO Department of Human Services
Charles Smith	Substance Abuse and Mental Health Services Administration
Abigail Tucker	Community Reach Centers
Doug Wilson	CO State Public Defender

## Pretrial Release Task Force

<b>Name</b>	<b>Affiliation</b>
Stan Hilkey, <i>Chair</i>	Department of Public Safety
Chris Bachmeyer	District Court Judge, 1st Judicial District (J.D.)
Jennifer Bradford	Metro State University
Maureen Cain	State Public Defender's Office
Steve Chin	Colorado Association of Pretrial Services
Shawn Day	Aurora Municipal Court
Janet Drake	Attorney General's Office
Valarie Finks	Victim Representative, 18th (J.D.)
Bill Kilpatrick	Golden Police Department
Rick Korneld	Private Defense Attorney
Mindy Masias	State Court Administrator's Office
Greg Mauro	Denver Community Corrections
Lucienne Ohanian	State Public Defender's Office
Tom Raynes	CO District Attorneys' Council
Clifford Riedel	District Attorney's Office, 8th (J.D.)
Monica Rotner	Community Justice Services, Boulder County
Joseph Salazar	State Representative, House District 31

Lang Sias	State Representative, House District 27
Glenn Tapia	Division of Probation Services
Kirk Taylor	Sheriff's Office, Pueblo County
Douglas Wilson	CO State Public Defender
Bo Zeerip	District Attorney's Office, 21st (J.D.)

## Abuse of Youth in Custody

<b>Name</b>	<b>Affiliation</b>
Joe Thome, <i>Chair</i>	Division of Criminal Justice
Joseph Brozek	Division of Child Welfare, CO Department of Human Services
Tony Gherardini	CO Department of Human Services
Blake Harrison	District Attorneys' Office, 2nd Judicial District
Anders Jacobson	Division of Youth Services, CDHS
Natasha Mitchell	Office of Colorado's Child Protection Ombudsman
Gretchen Russo	Judicial and Legislative Administrator, CDHS
Effie Seibold	State Public Defender's Office



# Commission staff

**Kim English**

Research Director, Office of Research and Statistics  
Division of Criminal Justice

**Richard Stroker**

Consultant

**Cooper Reveley**

Legislative Liaison, Office of the Executive Director  
Department of Public Safety

**Peg Flick**

Office of Research and Statistics  
Division of Criminal Justice

**Kevin L. Ford**

Office of Research and Statistics  
Division of Criminal Justice

**Linda Harrison**

Office of Research and Statistics  
Division of Criminal Justice

**Laurence Lucero**

Office of Research and Statistics  
Division of Criminal Justice

**Germaine Miera**

Office of Research and Statistics  
Division of Criminal Justice

**Jack Reed**

Office of Research and Statistics  
Division of Criminal Justice

**Stephane Waisanen**

Office of Research and Statistics  
Division of Criminal Justice







# 1

## Introduction

This report documents the Commission's twelfth year of work and accomplishments, describing the Commission's activities between July 1, 2018 and June 30, 2019. During Fiscal Year 2019, the Commission studied issues related to juvenile delinquency, pretrial release, the mental health of individuals involved in the justice system, and the institutional abuse of youth in facilities operated by the Department of Human Services. The Commission heard from the Council of State Governments on current efforts to improve outcomes for youth in Colorado and from the Equitas Project on its Colorado Course Corrections initiative. Additionally, Commissioners received in-depth data presentations on criminal justice processes, the prevalence of driving under the influence of drugs and alcohol, and trends and issues in criminal justice. More detailed information can be found in the "Activities of the Commission" section.

After months of study in Fiscal Year 2019, the Commission approved twelve recommendations

– nine legislative and three policy – in the areas of delinquency, mental health, pretrial, and institutional abuse of youth. 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 2019 legislative session, the content of four pieces of legislation included elements of Commission recommendations (see Table 1.1 on next page).

This 2019 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 2018 through June 2019; Section 4 details the Commission's recommendations and outcomes; and Section 5 describes the Commission's next steps.

**Table 1.1. Bills related to Commission recommendations**

Bill number	Bill title	Status
House Bill 19-1263	<p><b>Offense Level for Controlled Substance Possession</b></p> <p><i>(Note: This bill was not initiated by CCJJ, but included elements of a previous CCJJ recommendation from the Drug Policy Task Force, FY13-DP03)</i></p>	Signed
House Bill 19-1297	<p><b>Jail Capacity Data Collection</b></p> <p><i>(Note: This bill was not initiated by CCJJ, but included elements of a previous CCJJ recommendation from the Bail Subcommittee, FY13-BL04)</i></p>	Signed
House Bill 19-1331	<p><b>Remove Limitation on Evidence-based Practices Implementation For Capacity Resource Center Collaboration</b></p> <p><i>(Note: This bill was not initiated by CCJJ, but included elements of a previous CCJJ recommendation and modified HB13-1129 related to FY13-EPIC1)</i></p>	Signed
Senate Bill 19-036	<p><b>State Court Administrator Reminder Program</b></p> <p><i>(Note: This bill was not initiated by CCJJ, but included elements of a previous CCJJ recommendation from Pretrial Release Task Force, FY19-PR10)</i></p>	Signed



# 2

## Legislative intent and membership

The Colorado Commission on Criminal and Juvenile Justice (“Commission”) was created by House Bill 07-1358 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 <http://cdpsweb.state.co.us/cccj/legislation.html>.

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 saw a significant turnover in membership during Fiscal Year 2019. Nine designated members joined the Commission: Minna

Castillo Cohen from the Department of Human Services, Janet Drake representing the Attorney General’s Office, Kristen Hilkey representing the Adult Parole Board, Angie Paccione from the Department of Higher Education, Tom Raynes representing the Colorado District Attorneys’ Council, Cliff Riedel with the 8th Judicial District Attorney’s Office, Megan Ring as the State Public Defender, Gretchen Russo representing the Juvenile Parole Board, and Dean Williams with the Colorado Department of Department of Corrections.

Additionally, twelve new members have been appointed to the Commission: Shawn Day representing municipalities, Julie Gonzales, Serena Gonzales-Gutierrez and Matt Soper representing the state legislature, Nancy Jackson representing counties/county commissioners, William Kilpatrick representing the Chiefs of Police Association, Richard Kornfeld representing criminal defense, Andrew Matson representing the formerly incarcerated, Greg Mauro occupying an at-large position, Jennifer Stith and Anne Tapp representing

victim organizations, and Abigail Tucker representing mental health treatment providers.

Doug Wilson retired at the close of Fiscal Year 2018 and leaving the Commission vice-chair position vacant. At the October 2018 Commission meeting, members unanimously voted to assign Joe Thome, Director of the Division of Criminal Justice at the Department of Public Safety, to the position of Commission Interim Vice-Chair until a permanent vice-chair could be appointed.

During Fiscal Year 2019, Jennifer Bradford, Tony Gherardini, Rose Rodriguez and Meg Williams resigned from the Commission; Daniel Kagan, Cynthia Kowert, Joe Morales, Rick Raemisch, Joseph Salazar, Lang Sias and Robert Werthwein reached the end of their terms. At the writing of this report, all positions at the Commission have been seated.



# 3

## Activities of the Commission

This section summarizes the activities and accomplishments of the Commission in Fiscal Year 2019. 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 by 2018 legislation for all Colorado's Boards and Commissions,
- A report on the work undertaken by the Commission's Task Forces and Subcommittees in Fiscal Year 2019.

### 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 2019, experts were brought in to present eight topics discussed below.

### Crime and justice trends

During the 2019 Fiscal Year, Commissioners received two in-depth presentations on crime and justice trends by researchers from the Division of Criminal Justice's Office of Research and Statistics. The first presentation provided on September 2018 discussed offense rates, court filings, competency evaluations and restorations, and youth and adult correctional populations. In the spring of 2019, the second presentation offered information on trends and issues in criminal justice. The following is a summary of the presentation:

- Colorado prisons are operating at capacity and the prison population is projected to increase significantly;

- Drug possession is the primary driver of a significant increase in court filings, followed by felony assaults;
- Methamphetamine appears to be the primary drug involved, followed by heroin
- Substance abuse treatment works;
- Addicts are more likely to fail criminal justice placements;
- The presence of Traumatic Brain Injury (TBI) is common in the justice population, and many individuals with TBI have substance use disorders;
- Professional training regarding the science of addiction must be translated into practice;
- Access to treatment, including medication-assisted treatment (MAT), must be greatly expanded in Colorado.

### **Driving under the influence of drugs and alcohol in Colorado**

In 2017, the Colorado General Assembly enacted House Bill 17-1315 which mandated that the Division of Criminal Justice (DCJ) collect and analyze specific data regarding driving under the influence of drugs and alcohol. This presentation, by Becky Bui of DCJ's Office of Research and Statistics, provided insight into the prevalence of drug-involved driving by examining toxicology information associated with individual DUI court cases.

### **Pretrial services and assessment tools**

Mr. Greg Mauro is Director of Community Corrections for the City and County of Denver and a member of the Commission's Pretrial Release Task Force. Mr. Mauro provided the Commission an overview of pretrial services programs and the use of pretrial risk assessment tools. He discussed the national trends in pretrial reform, Colorado's bail statute, the duties of pretrial programs, pretrial programs in Colorado and pretrial risk assessment tools, including the Colorado Pretrial Assessment Tool (CPAT).

### **Financial bonds and pretrial release**

Mr. Bo Zeerip is an assistant district attorney from the 21st Judicial District and a member of the Pretrial Release Task Force. Mr. Zeerip provided Commissioners with an overview of financial bonds and pretrial release, providing a review of a variety of initiatives by other states along with recent case law that is relevant to the work of the Pretrial Release Task Force.

### **The Commission's 2013 bond reform effort**

Ms. English and Ms. Flick from DCJ's Office of Research and Statistics presented information about the impact of previous work by the Commission. The Commission produced significant work in the area of bond reform in 2011, 2012 and 2013; this resulted in legislative changes in 2013. Following the 2013 bond reform efforts, the use of personal recognizance (PR) bonds for felony cases increased from 12% to 21%. For misdemeanor cases the PR rate increased from 16% to 27%. However, there was significant variation across counties in the use of PR bonds, and for some jurisdictions, such as Denver and Mesa Counties, the use of PR bonds increased considerably.

### **Council of State Governments (CSG): Improving outcomes for youth in Colorado**

In May of 2018, Governor Hickenlooper established the Colorado Improving Outcomes for Youth (IOYouth) Task Force in partnership with CSG Justice Center. To inform the Commission of the work of the IOYouth Task Force, Adam Zarrin from the Governor's Office and Nina Salomon from CSG provided the Commission with an overview of the IOYouth Task Force and its activities. The IOYouth Task Force produced the following recommendations:

- Expand juvenile diversion programs in Colorado and establish a statewide policy and guidelines for diversion.

- Develop clear criteria for detention-eligibility in order to limit secure detention for juveniles who pose a risk of harm to others or risk of flight from prosecution when community-based alternatives are insufficient to mitigate this risk.
- Target the Community Youth Development Study (CYDS) resources more efficiently by focusing resources on juveniles most at-risk in order to reduce admissions to secure detention and prevent over supervision in the community.
- Select and adopt a validated risk and needs assessment tool to inform court decision making and establish policies to require and support the use of the tool.
- Establish statewide standards for juvenile probation across Colorado that are aligned to research-based policies and practices.
- Improve the effectiveness of community-based services for youth on probation and parole.
- Expand the use of kinship care for juvenile justice-involved youth in detention and commitment and under consideration for out-of-home placement.

These recommendations were translated into legislative language and a bill was introduced in the 2019 legislative session.

### Colorado course corrections

Mr. Atchity from the Equitas Project presented on its initiative, Colorado Course Corrections. Highlights of the presentation are provided below.

- In October 2018, experts and leaders in health, safety and criminal justice gathered for the *Course Corrections: Steps to Health and Justice* Summit.
- The purpose of the Summit was as follows: a) To acknowledge Colorado's urgent need for alternatives to incarceration and criminal justice system involvement for people living with mental illness; b) To build consensus regarding what course corrections are most urgently needed; and c) To provide recommendations for improving

health, reducing incarceration, maintaining public safety, and saving taxpayer dollars.

- At the conclusion of the Summit, the 2018 Course Corrections participants declared that the State of Colorado is in the midst of a public health crisis and published a series of recommendations concerning childhood and youth, health care, education, employment, housing, public safety, justice, corrections, reentry, and data.

### Behavioral health

Ms. Doyle Forrestal, director of the Colorado Behavioral Healthcare Council (CBHC), presented an update on the implementation of Senate Bill 17-207, *Strengthen Colorado Behavioral Health Crisis system*. Ms. Forrestal explained that the Mental Health/Jails Task Force of the Commission produced a recommendation that helped lay the groundwork for the legislation, and the Commission's four legislative representatives sponsored the bill. A main component of Senate Bill 17-207 was to end the use of jails for those in a mental health crisis who have not been charged with a crime. Ms. Forrestal explained that the funding of \$9,428,755 significantly bolstered the statewide Behavioral Health Crisis System and related services, including the following:

- Enhancing walk-in and crisis stabilization capacity and security;
- Co-locating facilities to streamline drop-off procedures for law enforcement, including designated law-enforcement entrances and increased procedural education;
- Increasing partnerships with detox and other healthcare systems;
- Enhancing mobile response and transportation capacity;
- Hiring regional crisis system coordinators to support law enforcement and other community partners; and
- Increasing staffing in crisis facilities.



*At the conclusion of the Mental Health/Jails Task Force, four presentations were made to provide an update to the Commission on legislative initiatives that began as Commission recommendations from the Mental Health/Jails Task Force. The following summarizes these presentations.*

### **Senate Bill 17-207 – Strengthen Statewide Response to Behavioral Health Crises**

Ms. Jagruti Shaw from the Office of Behavioral Health (OBH) in the Department of Human Services explained the components of Senate Bill 17-207. The bill disallows the use of jails as a placement option for individuals placed on an emergency mental health hold if they have not been charged with a crime. It also enhances the ability of emergency departments to serve individuals who are experiencing a behavioral health crisis. The bill provided \$7.1 million to the OBH to expand the crisis system and better equip law enforcement to respond to individuals in a mental health crisis.

### **Senate Bill 18-249 – Mental Health Diversion Program**

Ms. Kara Martin from the State Court Administrator’s Office, described this bill which was the result of a Commission recommendation. S.B.18-249 establishes the Mental Health Diversion Program in four pilot sites. This is a post-arrest, pre-plea diversion program for those with unmet mental health needs who were arrested for low level, non-Victim Rights Act (VRA) offenses.

### **Senate Bill 18-250 – Jail-Based Behavioral Services (JBBS) Mental Health Expansion**

Ms. Kerry Krause from the Office of Behavioral Health (OBH) explained that the JBBS program began in 2011 with funding from the Correctional Treatment Board and Senate Bill 13-215 (the marijuana tax fund). JBBS is a partnership between the state, a county sheriff and local treatment providers to serve those in jail with substance use disorders (SUD) and co-occurring SUD and mental health disorders. Services include

screening, assessment, treatment, transitional case management care, recovery support funding, and medication assisted treatment (MAT). On July 1, 2019, \$18 million was allocated to expand JBBS from 45 jails to all county jails. The intent is to expand the program to include pre-sentenced individuals, those awaiting competency evaluations, and to increase the availability of MAT.

### **SB-18-251 – Court Liaison / Bridges Program**

Ms. Jennifer Turner from the State Court Administrator’s Office (SCAO) provided information on the Bridges Program was created by Senate Bill 18-251. This bill mandates SCAO to contract with behavioral health organizations across Colorado to provide at least one court liaison in each of the state’s 22 judicial districts. The mission is to promote positive outcomes for individuals living with mental health conditions who become involved in the justice system by fostering collaboration between the criminal justice and mental health systems.

## **Statutorily mandated training for all Colorado’s boards and commissions (House Bill 2018-1198)**

- Ms. Ingrid Barrier from the Attorney General’s Office explained to the Commission that legislation was passed in 2018 calling for an annual training for all of Colorado’s boards and commissions (H.B. 2018-1198). Ms. Barrier provided a training on topics ranging from statutory mandates and staff duties to decision-making processes, the open meetings requirement under the Sunshine Law, and the Colorado Open Records Act.
- Consistent with H.B. 18-1198, Commissioners attended New Member Orientation provided by Commission staff. Members were briefed on the Commission background, mandates, by-laws, and processes.

## Commission work plan for Fiscal Year 2019

### Commission task forces and subcommittees<sup>1</sup>

The Commission's work during Fiscal Year 2019 was undertaken by the following five groups, as depicted in Figure 3.1:

- Legislative Committee
- Abuse of Youth in Custody Subcommittee, Joe Thome, chair
- Age of Delinquency Task Force, Jessica Jones and Joe Thome, co-chairs
- Mental Health/Jails Task Force, Joe Pelle, chair
- Pretrial Release Task Force, Stan Hilkey, chair

### Legislative Subcommittee

This 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 are added.

### Abuse of Youth in Custody Subcommittee

The Abuse of Youth in Custody Subcommittee was seated by the Commission in September 2018 in

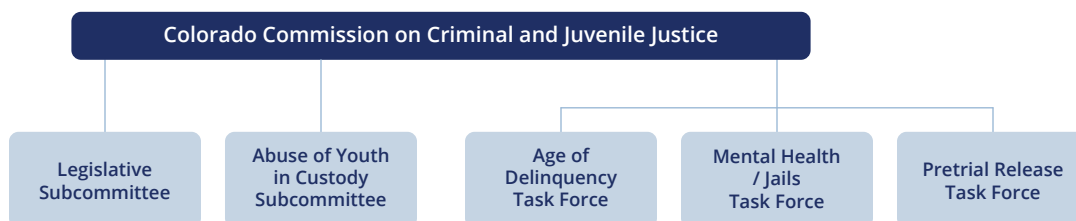
response to a mandate in House Bill 2018-1346 (*Concerning child abuse related youth who are under the continuing jurisdiction of the court in an out-of-home placement when they are younger than twenty-one years of age*).

The Subcommittee studied whether existing criminal statutes address abuse of a child or youth in facilities operated by the Colorado Department of Human Services and reported its findings to the Commission. The Commission approved the following recommendation at the June 2019 Commission meeting:

**FY19-AYIC01** Amend the statute regarding the mandatory reporting of institutional abuse.

This recommendation amends statute (19-3-304, C.R.S.) that obligates certain professionals to report child abuse/neglect to child protective services or law enforcement applies only to youth up to the age of 18. Given the age range in the new definition of institutional abuse (under 21 years of age, pursuant to H.B. 2018-1346), an important gap exists in the protection of youth in facilities who are not covered by the current mandatory reporting statute. The new section would introduce provisions to require mandatory reporting of institutional abuse for youth under 21 years of age.

**Figure 3.1. Commission and subcommittees/task forces**



<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.

The Commission submitted a report to the General Assembly and the Abuse of Youth in Custody Subcommittee concluded its meetings in March 2019.

### 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 of the appropriateness of assessments currently in use; and Youthful Offender System outcomes following recent eligibility changes.

The Task Force first focused on the absence of a systematic, therapeutic, early intervention approach to manage a younger population (10-12 year olds) which resulted in the following recommendation to the Commission:

**FY19-AD01** Development of a comprehensive juvenile services.

This recommendation requires the development, by each judicial district, of a data-driven, cross-disciplinary, comprehensive juvenile services plan addressing the full juvenile justice continuum in the judicial district. The recommendation was approved by the Commission on March 8, 2019.

Subsequently, the Commission assigned specific study areas to the Age of Delinquency Task Force, pursuant to 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.

To address this mandate, the Task Force received educational presentations on brain development, traumatic brain injury (TBI), the Youthful Offender System (YOS), and the Division of Youth Services (DYS). The Task Force also gathered research material on brain development. At the end of Fiscal Year 2019, Task Force members identified the following areas of interest regarding the study of 18-24 year olds:

1. Provide meaningful information to decision makers at appropriate times.
2. Explore the development of community assessment centers.
3. Explore opportunities to expand pretrial services.
4. Expand or develop specialized diversion opportunities.
5. Explore the use or development of specialty courts.
6. Develop or expand specialized probation supervision efforts.
7. Expand the availability of YOS, or expand eligibility for participation in YOS.

### Mental Health/Jails Task Force

This Task Force was seated in June 2016 with the charge of exploring ways to divert individuals with mental and behavioral health problems away from the criminal justice system, while recognizing that some individuals with acute mental and/or behavioral health problems will need to be incarcerated and so effective response options should be available. The Task Force undertook extensive work in the areas of early diversion, the competency system in Colorado, and mental health training for law enforcement.

During Fiscal Year 2019 the Task Force focused on the provision of mental health services in jail and alternative placement options for individuals in custody with severe mental illness who require services beyond the capacity of the jail to manage. This work resulted in the following recommendation to the Commission:

**FY19-MH01** Develop pilot programs to provide care for jail detainees with acute behavioral health needs.

This recommendation, approved by the Commission on February 8, 2019, requires funding for pilot programs to support collaboration between a qualifying hospital or acute care setting (“27-65 designated” facility, per C.R.S. 27-65-105) and jails in one urban region and one rural region. There was no action on this recommendation during the FY2019 legislative session. The Mental Health/Jails Task Force concluded its work in June, 2019.

### 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 three areas of focus: a) Use of pretrial services and risk assessment tools on a statewide basis, b) Develop a pretrial detention model which could reduce the reliance on cash bonds, and c) Examine opportunities to improve implementation of 2013 statutory changes

The Task Force produced nine recommendations during Fiscal Year 2019. These are described below.

**FY19-PR01** Pretrial Risk Assessment will available and utilized by judicial officers in all counties throughout Colorado for purposes of setting bond and establishing conditions of release for felony and misdemeanor level offenses.

This recommendation was approved by the Commission on November 1, 2018 and was included

in House Bill 2019-1226. The bill was introduced March 8, 2019 and, although it passed the House and two Senate committees, the bill “dies on the calendar” without further action by the Senate at the end of the Fiscal Year 2019 Legislative Session.

**FY19-PR02** Require the implementation of pretrial risk assessment processes, training, and provide guidance for the selection, use, and administration of training on pretrial risk assessment to all Colorado counties in order to set bond and establish conditions of release for felony and misdemeanor level offenses.

This policy recommendation was approved by the Commission on November 1, 2018 and there was no action on this recommendation during the FY2019 Legislative Session.

**FY19-PR03** Expand pretrial services programs statewide and establish a state administered grant program to incentivize local jurisdictions (counties) to develop and support pretrial programs and services.

This recommendation was approved by the Commission on November 1, 2018 and was included in House Bill 2019-1226. The bill was introduced March 8, 2019 and, although it passed in the House and two Senate committees, the bill “dies on the calendar” without further action by the Senate at the end of the Fiscal Year 2019 Legislative Session.

**FY19-PR04** Develop a pretrial services alternative for smaller jurisdictions and request that the state judicial department utilize formula-based funding to provide services on behalf of counties within a judicial district.

This recommendation was approved by the Commission on February 8, 2019 and was included in House Bill 2019-1226. The bill was introduced March 8, 2019 and, although it passed in the House and two Senate committees, the bill “dies on the calendar” without further action by the Senate at the end of the Fiscal Year 2019 Legislative Session.

**FY19-PR06** Establish an expedited pretrial release process.

This recommendation was approved by the Commission on January 11, 2019 and was included in House Bill 2019-1226. The bill was introduced March 8, 2019 and, although it passed in the House and two Senate committees, the bill “dies on the calendar” without further action by the Senate at the end of the Fiscal Year 2019 Legislative Session.

**FY19-PR07** Revise the initial bond hearing process including considerations of monetary conditions of bond.

This recommendation was approved by the Commission on January 11, 2019 and was included in House Bill 2019-1226. The bill was introduced March 8, 2019 and, although it passed in the House and two Senate committees, the bill “dies on the calendar” without further action by the Senate at the end of the Fiscal Year 2019 Legislative Session.

**FY19-PR08** Encourage best practices for pretrial training and data collection.

The recommendation was approved by the Commission on January 11, 2019. This recommendation requires collaboration between Office of the State Court Administrator (SCAO) and other stakeholders, including the Colorado District Attorneys’ Council (CDAC), the Office of the State Public Defender, the Office of the Alternate Defense Council, the Pretrial Executive Network, and law enforcement. Action on this recommendation is unknown.

**FY19-PR09** Clarify public defender and district attorney involvement in bail hearings.

This recommendation was approved by the Commission on January 11, 2019 and was included in House Bill 2019-1226. The bill was introduced March 8, 2019 and, although it passed in the House and two Senate committees, the bill “dies on the calendar” without further action by the Senate at the end of the Fiscal Year 2019 Legislative Session.

**FY19-PR10** Develop a statewide court date reminder system.

This recommendation was approved by the Commission on November 9, 2018. Senate Bill 2019-036 (State Court Administrator Reminder Program) was introduced on January 4, 2019 and was signed by the Governor on May 29, 2019. Although not initiated by the Commission, the bill addresses the development of a court date reminder system. The system must be implemented by the State Court Administrator by July 1, 2020.

### House Bill 2019-1226

After the failure of House Bill 19-1226, which combined recommendations FY19-PR01, FY19-PR03, FY19-PR04, FY19-PR06, FY19-PR07, FY19-PR09, the Commission asked Task Force members to continue this work in the following ways: a) Revisit the Commission recommendations and amendments made to House Bill 19-1226, b) Improve judicial engagement around bail reform and, c) Identify pretrial data elements to be collected. Three Working Groups were created to develop recommendations and submit to the Task Force for vote. The Task Force decided to table the work on preventive detention until the foundation of pretrial services is established in Colorado.

## New directions

The Commission typically holds an annual retreat to discuss operational practices, review the Commission’s goals and status of those goals, and identify desired outcomes for the year ahead. However, due to the recent Commission’s reauthorization, the turnover in membership, and the robust work taking place in the task forces, Commissioners agreed to postpone the retreat until after the 2019 legislative session. Following the 2019 legislative session, Commissioners were informed of the new legislative mandates directing the Commission’s work. These include the following:

- **House Bill 2019-1149**

This bill asks the Commission to study emerging adults in the justice system. The Commission is to compile data regarding criminal filings for individuals who are 18 to 24 years of age; study the established brain development research; study the potential impacts on the Division of Youth Services and the Colorado Department of Corrections' Youthful Offender System if these also served emerging adults, and make recommendations to the General Assembly by June 30, 2020. The Commission's Age of Delinquency Task Force started this work and received educational presentations from the Department of Public Health and Environment on brain development, the Division of Youth Services and the Youthful Offender System.

- **Senate Bill 2019-008**

This bill mandates the Commission to study and make recommendations concerning: a) Alternatives to filing criminal charges against individuals with substance use disorders who have been arrested for drug-related offenses; b) Best practices for investigating unlawful opioid distribution; and c) A process for automatically sealing criminal records for drug offense convictions.

During Fiscal Year 2019, the Commission had three task forces and one subcommittee: The Age of Delinquency Task Force, the Pretrial Release Task Force, the Mental Health/Jails Task Force and the Abuse of Youth in Custody Subcommittee. Because these mandates direct the Commission's areas of study, and require forming new study groups (task forces and subcommittees), the annual retreat was postponed.

## Summary

This section reviewed the work of the Commission and its Task Forces from July 2018 through June 2019. During that time, the Commission continued the work of previously established task forces (Mental Health/Jails, Pretrial Release and Age of Delinquency) and created one new area of work, undertaken by the Abuse of Youth Subcommittee. The Commission approved twelve recommendations in Fiscal Year 2019. The General Assembly passed four pieces of legislation that contained elements of Commission recommendations. Additional information and details of Fiscal Year 2019 recommendations are available in Section 4.





# 4

## Recommendations and outcomes

This section presents the twelve recommendations approved by the Commission in Fiscal Year 2019. 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 three task forces and one subcommittee are described below in the following order: Age of Delinquency, Mental Health/Jails, Pretrial Release, and Abuse of Youth in Custody.

The recommendations reported below 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~~.





## Age of delinquency recommendations

### FY19-AD01      **Develop a comprehensive juvenile services plan**

This recommendation proposes the development of a data-driven, cross-disciplinary, comprehensive juvenile services plan addressing the full juvenile justice continuum in each judicial district by undertaking the following:

- In §19-2-211, C.R.S., expand the local Juvenile Services Planning Committee (JSPC) responsibilities to include the development of a data-driven three-year plan, with annual updates, targeting the full juvenile justice continuum in each judicial district;
- In §19-2-212, C.R.S., require the state Working Group defined therein to identify the specific components of the data-driven plan; and
- In §39-28.8-501, C.R.S., authorize the use of existing marijuana tax revenue distributed to Senate Bill 1991-94 to support data-driven plan development and implementation by judicial districts.

*[See proposed statutory language below.]*

### **Discussion**

Cross-disciplinary planning is a vital first step towards identifying the risks and needs of the state's juvenile justice population, allowing for a deeper understanding of the service needs of youth penetrating local juvenile justice systems. A Juvenile Services Planning Committee (JSPC)<sup>2</sup> exists in each judicial district. The primary role of the JSPC is to develop a plan for the allocation of juvenile services resources within the judicial district. Currently each JSPC develops a plan solely for the allocation of funds related to the Colorado Youth Detention Continuum (CYDC) as described in §19-2-310, C.R.S.<sup>3</sup> This proposal changes the focus of the plan to include the entire juvenile justice continuum, and requires the use of data to describe the service needs and gaps in the judicial district.

Currently, every year, each judicial district may develop and submit as many as three, and sometimes more, separate "plans" to address juvenile justice issues, according to requirements related to the CYDC, the Collaborative Management Program (CMP) and the state juvenile diversion program. Despite these efforts, there is no comprehensive, cross-disciplinary review of local data that identify trends and gaps in services in counties within a judicial district. Rather, multiple professionals work independently in the development of juvenile justice related plans. This proposal replaces the current JSPC plan with a comprehensive data-driven review across the juvenile justice continuum with goals of reducing duplication of services and addressing gaps in services across the judicial district.

<sup>2</sup> Juvenile Services Planning Committees (JSPCs) are located in each of the 22 judicial districts and assist local officials in developing a continuum of services for delinquent youth and their families, including planning for each local Colorado Youth Detention Continuum (CYDC) programming (formerly labeled, "Senate Bill 94"). These committees develop plans for the allocation of resources for local juvenile services within the judicial district for the fiscal year.

<sup>3</sup> These funds are intended to be used for services to juveniles that prevent detention/commitment.

This proposal does not remove the decision-making authority from the respective planning committees but serves to create a foundation for comprehensive planning efforts that address the needs of each judicial district. The plan will serve as the basis of information for local applications for state funding from, at a minimum, juvenile diversion, collaborative management programs, the detention continuum, and other funding sources that may be available to address the needs of the juvenile justice population.

This recommendation builds on an existing cross-disciplinary local board, the judicial district’s JSPC, expanding its membership to ensure the inclusion of key professionals necessary for the development of a comprehensive, local, data-driven plan.

The three-year plan with annual updates, once approved by the local JSPC, is submitted every March 1 for review by the CYDC Advisory Board<sup>4</sup> as well as other state funding entities. Because of its increased scope, the plan can be used in decision making regarding resources and funding needs, along with promoting collaboration and cost sharing.

Additionally, the specific components of the plan must be clearly specified by the Working Group<sup>5</sup> defined in §19-2-212, C.R.S. (see Footnote 2) to ensure consistency across judicial districts and to emphasize the use of empirical data. This plan will profile the population at each stage of the juvenile justice system, the interventions available, and the processes by which information is shared. It will also describe efforts to reduce or eliminate gaps in services and address disproportionate minority contact within the judicial district. The plan will describe current services and funding sources, and gaps in services, and use the most recent information available to identify trends across the juvenile justice continuum.

**Proposed statutory language**

In §19-2-211, C.R.S., amend **subsection (1)**, insert a new **subsection (2)**, and renumber existing subsection (2) to **subsection (3)**. In §19-2-212, C.R.S., add **subsection (3)**. In §39-28.8-501 (2) (a) (IV), C.R.S., add **“sub-subparagraph” (P)**.

19-2-211. Local juvenile services planning committee – creation – duties – identification and notification of dually identified crossover youth

(1) If all of the boards of commissioners of each county or the city council of each city and county in a judicial district agree, there may be created in the judicial district a local juvenile services planning committee that is appointed by the chief judge of the judicial district or, for the second judicial district, the presiding judge of the Denver juvenile court from persons recommended by the boards of commissioners of each county or the city council of each city and county within the judicial district. The committee, if practicable, must include, but need not be limited to, a representative from the county department of human or social services, a local school district, a local law enforcement agency, a local

<sup>4</sup> The Colorado Youth Detention Continuum (CYDC) state advisory board assists the Division of Youth Services in oversight of the Colorado Youth Detention Continuum funding (formerly labeled, “Senate Bill 94”) which is allocated to the 22 judicial districts to develop a detention continuum.

<sup>5</sup> The Working Group establishes criteria for detention and commitment for adoption by Colorado Department of Human Services (CDHS) and the Judicial Department and determines the formula for allocating funds for alternative services for placement of juveniles in the custody of CDHS.

probation department, the division of youth services **TO REPRESENT THE DETENTION CONTINUUM TO INCLUDE COMMITMENT AND PAROLE/AFTERCARE**, private citizens, the district attorney's office, and the public defender's office, and a community mental health representative, **A COMMUNITY SUBSTANCE USE TREATMENT PROFESSIONAL, A COMMUNITY SERVICES VICTIM REPRESENTATIVE** and a representativeS of the concerns of municipalities. The committee, if created, shall meet as necessary to develop a plan for the allocation of resources for local juvenile services within the judicial district for the fiscal year. The committee is strongly encouraged to consider programs with restorative justice components when developing the plan. **THE SECTION OF THIS PLAN THAT ADDRESSES FUNDS APPROPRIATED THROUGH SECTION 19-2-310 MUST BE REVIEWED AND RECOMMENDED FOR APPROVAL BY THE WORKING GROUP ESTABLISHED IN SECTION 19-2-212 AND** The plan must be approved by the state department of human services. A local juvenile services planning committee may be consolidated with other local advisory boards pursuant to section 24-1.7-103.

**2) THE LOCAL JUVENILE SERVICES PLAN:**

- a) **SHALL DESCRIBE THE JUVENILE JUSTICE POPULATIONS SERVED AT EACH STAGE OF THE JUDICIAL DISTRICT'S JUVENILE JUSTICE SYSTEM, EMPHASIZING DIVERSION FOR CHILDREN AGES 10-12 WHO ARE JUVENILE JUSTICE SYSTEM-INVOLVED, AND INCLUDING CHILDREN AND JUVENILES WHO ARE INVOLVED WITH THE JUVENILE JUSTICE SYSTEM AT THE MUNICIPAL LEVEL, USING THE MOST RECENT DATA AVAILABLE, INCLUDING TRENDS THAT MAY BE OCCURRING;**
- b) **SHALL DESCRIBE THE PROVISION OF JUVENILE JUSTICE INTERVENTIONS WITHIN THE COMMUNITY TO INCLUDE LAW ENFORCEMENT CONTACTS AND ARRESTS, JUVENILE DIVERSION, COURT IMPOSED INCENTIVES AND SANCTIONS, PROBATION, YOUTH DETENTION CONTINUUM, COLLABORATIVE MANAGEMENT PROGRAM (WHEN JUVENILE JUSTICE IS AN IDENTIFIED COLLABORATIVE MANAGEMENT POPULATION TO BE SERVED), DUALY IDENTIFIED CROSSOVER YOUTH, COMMITMENT TO THE DIVISION OF YOUTH SERVICES, AND PAROLE/ REENTRY INTO THE COMMUNITY;**
- c) **SHALL DESCRIBE THE USE OF ESTABLISHED VALIDATED RISK AND NEEDS SCREENING AND ASSESSMENT INSTRUMENTS AT EACH STAGE OF JUVENILE JUSTICE SYSTEM INVOLVEMENT AND HOW THOSE TOOLS ARE USED FOR INDIVIDUAL YOUTH SERVICE PLANNING;**
- d) **SHALL DESCRIBE THE CHALLENGES IN MEETING THE NEEDS OF THE JUVENILE JUSTICE POPULATION TO INCLUDE SPECIFIC TREATMENT UNMET NEEDS, THE NEED FOR COMMUNITY-BASED SERVICES AND OUT OF HOME PLACEMENT, AND FOSTER/KINSHIP CARE OPTIONS FOR DUALY IDENTIFIED CROSSOVER AND OTHER JUSTICE-INVOLVED YOUTH, SHARING OF INFORMATION ACROSS SYSTEMS AND OTHER ISSUES AND CONCERNS;**
- e) **WHERE POSSIBLE, SHOULD REFLECT THE SAME INFORMATION THAT IS REQUESTED BY THE STATE FUNDERS FOR JUVENILE JUSTICE PROGRAMS TO REDUCE THE NEED FOR DEVELOPMENT OF MULTIPLE PLANS;**

- f) **WILL BE DUE NO LATER THAN MARCH 1 OF EACH YEAR FOR FUNDING AVAILABLE ON JULY 1 WITH DISTRIBUTION TO THE COLORADO DEPARTMENT OF HUMAN SERVICES INCLUDING THE DIVISIONS OF CHILD WELFARE AND YOUTH SERVICES, THE STATE COURT ADMINISTRATOR'S OFFICE INCLUDING THE DIRECTOR OF PROBATION SERVICES, AND THE DEPARTMENT OF PUBLIC SAFETY INCLUDING THE DIVISION OF CRIMINAL JUSTICE FOR USE IN ITS FUNDING APPROVAL PROCESSES PURSUANT TO SECTION 19-2-11 (2) (g);**
  - g) **THIS JUVENILE SERVICES PLAN, INCLUDING ITS DATA ANALYSIS, REVIEW OF TRENDS, CURRENT SERVICES PROVIDED, AND ISSUES AND CONCERNS, MUST BE USED AS A REFERENCE FOR APPLICATION PROCESSES REQUIRED FOR JUVENILE DIVERSION, COLLABORATIVE MANAGEMENT, DUALY-IDENTIFIED CROSSOVER YOUTH, DETENTION CONTINUUM PLANS AND OTHER FUNDING REQUESTS.**
  - h) **THE DIVISION OF YOUTH SERVICES SHALL PROVIDE TECHNICAL ASSISTANCE TO CONDUCT THE DATA ANALYSIS FOR THE PLANNING AND PLAN DEVELOPMENT PROCESS UPON REQUEST OF A LOCAL JUVENILE SERVICES PLANNING COMMITTEE.**
- (3) (2) The plan must provide for the management of dually identified crossover youth. The plan must contain descriptions and processes to include the following:

*[Note: Except for renumbering, this subsection was not amended.]*

19-2-212. Working Group for criteria for placement of juvenile offenders- establishment of formula- review of criteria.

- 3) MEMBERS OF THE WORKING GROUP SHALL IDENTIFY THE COMPONENTS OF A CROSS DISCIPLINARY JUVENILE JUSTICE PLAN FOR THE JUVENILE SERVICES PLANNING COMMITTEES CREATED IN SECTION 19-2-211 AND SHALL REVIEW EACH DISTRICT PLAN ON AN ANNUAL BASIS. THE WORKING GROUP WILL BE RESPONSIBLE FOR RECOMMENDING APPROVAL OF SPENDING PLANS RELATED TO THE JUVENILE SERVICES FUND ESTABLISHED IN SECTION 19-2-310. TO REDUCE THE NEED FOR MULTIPLE PLANS, WHERE POSSIBLE, THIS PLAN SHOULD INCLUDE THE INFORMATION REQUESTED BY STATE ENTITIES FUNDING JUVENILE JUSTICE PROGRAMS. THIS JUVENILE SERVICES PLAN MUST INCLUDE DATA ANALYSIS UNDERLYING A REVIEW OF TRENDS, CURRENT SERVICES PROVIDED, AND SERVICE GAPS, AND SHOULD BE USED AS THE BASIS FOR FUNDING APPLICATION PROCESSES REQUIRED BY JUVENILE DIVERSION, COLLABORATIVE MANAGEMENT PROGRAMS, DUALY-IDENTIFIED CROSSOVER YOUTH, AND DETENTION CONTINUUM PLANS AND OTHER FUNDING REQUESTS.**

39-28.8-501. Marijuana tax cash fund – creation – distribution – legislative declaration.

- (2) (a) (IV). Subject to the limitation in subsection (5) of this section, the general assembly may annually appropriate any money in the fund for any fiscal year following the fiscal year in which it was received by the state for the following purposes:

**(P) FOR THE DEVELOPMENT AND IMPLEMENTATION OF DATA DRIVEN JUVENILE SERVICES PLANS PREPARED BY LOCAL JUVENILE SERVICES PLANNING COMMITTEES AS DESCRIBED IN SECTION 19-2-211(2).**

**Outcome**

This recommendation requires statutory change. The recommendation was approved by the Commission on March 8, 2019 and is first applicable for action during the FY 2020 legislative session.



## Mental health/jails recommendations

### **FY19-MH01      Develop collaborative pilot programs to provide care for jail detainees with acute behavioral health needs**

This recommendation identifies pilot program options to provide quality care for individuals held in jail who have acute behavioral health needs that are beyond the ability of the jail to manage and who do not meet criteria for diversion with the goals to develop information and experience necessary to advance a state-wide solution. This recommendation proposes the following:

- A care transitions partnership between local and regional acute care hospitals and county jails that provides quality care for jailed individuals who have acute behavioral health needs that are beyond the ability of the jail to manage.
- The target patient population includes those who are not eligible for diversion programs due to the serious nature of the criminal charge and whose behavioral health needs surpass the capacity of the jail to manage with existing in-house medical and/or mental health service providers.
- This partnership allows for the transfer of jailed individuals to acute care facilities for provision of appropriate services and is modeled after, and expands upon, the existing partnerships and transfer protocols for individuals experiencing a medical crisis while being held in jail.
- To support the development of initial pilot sites and to allow for one-time building modifications or other required changes, it is anticipated that additional state funds will need to be allocated to pilot this solution in one rural region and one urban region.

**Discussion**      Every day in Colorado, numerous individuals with behavioral health needs are housed in local jails. While some of these individuals are appropriate for diversion programs, some are not based on the nature of their charges and are required to remain in a jail.

Feedback from county jail administrators suggests that a minimum of 100 individuals annually, statewide, may need to be transferred from a jail to an acute care provider.<sup>6</sup> Currently the most common method jail officials have to manage this population is to request a court order to transfer the individual to Colorado Mental Health Institute/Pueblo (regardless whether competency is raised or not, due to acute psychiatric needs); there is a significant backlog for those awaiting transfer.

<sup>6</sup> Based on information obtained from several metro-county jail officials, it is estimated that the acute behavioral health population is about 1% of the total jail population. There are approximately 13,000 jail beds in Colorado, suggesting that the size of this target population is a minimum of 100-130 individuals over the course of a year that require services for acute needs. Additionally, recent projections by the Office of Behavioral Health (OBH) for restoration beds is upwards of 250-300 which appears to support (albeit with a slightly different focus) this estimate of approximately 100 beds total for the state to meet this acute need.



Jails have limited capacity to provide necessary treatments or services for these individuals who are required to remain in jail. Jails are not authorized to provide involuntary medication to individuals and not all jails in our state have nursing staff or mental health staff available daily, and very few have around-the-clock staffing. Jails can initiate and access hospitalization services for individuals with acute medical concerns and can even seek reimbursement for those acute care providers for Medicaid-eligible individuals during their detention.

However, efforts to transfer these individuals with acute behavioral health needs to these and other community services for stabilization and services are often unsuccessful. Effectively addressing the mental health needs of this patient population will not only provide direct benefit to the individuals and improve safety for jail staff, but may also significantly improve outcomes, such as system expenditures and recidivism, that would otherwise be absorbed by the broader community if no appropriate services are provided.

It is anticipated that most of these individuals will be eligible for Medicaid during their incarceration based on data from the Department of Health Care Policy and Financing (HCPF) indicating that approximately 65-75% of individuals leaving Colorado Department of Corrections are Medicaid eligible. Further, a survey of jails undertaken by the Task Force suggests the rates for jail populations to be higher. As a result, any community-based stabilization service, provided they are administered in accordance with federal regulations, would be eligible for reimbursement from the HCPF, the state executive agency that administers Colorado's Medicaid program.

It is anticipated that additional state resources would be necessary to cover additional services and costs associated with these episodes of care.

**Pilot description**

**Target population for proposed pilot** – The pilot population would include individuals booked into jail who are ineligible for diversion programs and whose behavioral health needs exceed jail resources. These individuals require an acute care setting for stabilization and treatment. This facility will need to be “27-65 designated”<sup>7</sup> and need to meet security requirements required by the Sheriffs’ Departments. The Task Force estimates the size of this population to be a minimum of 100 individuals per year, statewide. Depending on the regions selected for the pilot, the pilot may serve less than 100 individuals per year.

**Facility and services** – A pilot facility would be a private hospital or private acute care facility that is “27-65 designated” and enrolled for Medicaid reimbursement from HCPF. Such facility would be designated by HCPF as an “01 facility,” which is language that HCPF and the Center for Medicare and Medicaid Services (CMS) use to designate an acute care facility which, for the lay person, would be understood as a general hospital. The facility can offer both emergent physical health and behavioral health services.

It is recommended that the General Assembly provide support to pilot this solution in one rural region and one urban region to examine different resource models and to develop

<sup>7</sup> Facilities designated by the Office of Behavioral Health to provide services as specified under C.R.S., §27-65, Care and Treatment of Persons with Mental Health Disorders.

the necessary information and experience to advance a statewide solution. When the pilot proves to be successful, it is anticipated that a statewide solution would require at least four facilities to ensure regional access for all jails.

**Maintenance of custody and security** – An agreement must be drafted between the care facility and sheriffs’ offices for the design and implementation of access controls that meet the demands of detention for those individuals in custody.

- The transferring jail will be responsible for transporting the patient to the receiving facility and for any associated transportation costs. However, the jail and the receiving facility may develop an agreement or method for security and transportation when long distance transportation would be a burden for the jail.
- The transferring jail will be responsible for providing or arranging for necessary and appropriate security for the transferred individual while individual is at the receiving facility.
- The transferring jail may utilize its own staff to provide security for the patient, or may develop agreements with other counties, law enforcement agencies or other entities to provide necessary and appropriate security at the facility.

**Process** – The process for the provision of these services would include these elements:

1. Determine eligibility for appropriateness for this emergency referral for acute behavioral health care and eligibility for Medicaid;
2. Custody transfer;
3. Treatment plan and service provision for acute behavioral health needs; and
4. Transition back to jail and court system, ensuring a rapid process to mitigate decompensation risks upon return to jail.

**Funding strategy** – Funding for these pilots will require a blend of Medicaid reimbursement, state funding to support up-front capital costs, and county funding to support additional needs for transport, security and costs associated with individuals not covered by Medicaid.

- **Medicaid** – Per CMS standards,<sup>8</sup> any acute care hospital stay that exceeds 24 hours is covered by Medicaid provided the patient is eligible for Medicaid. This benefit is agnostic to diagnosis (physical health, behavioral health, etc.). Jails are responsible for health care costs incurred by individuals held for less than 24 hours.
- **State** – State funding will likely be necessary to support both up-front and ongoing costs<sup>9</sup> that may include modification of beds, building security measures and staffing.

<sup>8</sup> Federal rule: SSA Section 1905 (a)(xvii)(29)(A) and HCPF’s interpretation of this policy.

<sup>9</sup> Information gathered by the Task Force resulted in two cost estimates: 1) Hospital administrators suggests an approximate \$50,000 per room renovation to accommodate acute behavioral health population needs; and 2) According to the Office of Behavioral Health, the current daily cost for an existing state mental health hospital bed is \$717.

- **County** – Fiscal support from individual counties would include costs related to security staff on site, transportation to and from facility, and costs for services provided to individuals without Medicaid benefits. It is proposed that counties combine resources to secure a regional entity which would meet the needs of patients described here.

**Administrative oversight state entity** – It is expected that local counties may experience difficulties with identifying, contracting with and utilizing secure hospitals or facilities. Therefore, an Administrative Oversight (AO) State entity is needed to:

- Assist with the identification of possible secure-bed facilities that can provide the type and level of behavioral health care that may be required;
- Issue a Request for Services (RFS) or take other action to identify potential providers;
- Assist with the establishment of rates;
- Engage in other matters that will assist the counties in accomplishing placements;
- Assess and document the efficacy of this policy intervention; and
- Oversee utilization rates, outcomes and contract negotiation and compliance.

Additional state funds may be necessary for the AO to carry out the administrative duties specified above. Other regulatory bodies exist and will continue to be relevant for the pilot sites. Examples of these include, but are not limited to, [The Joint Commission](http://jointcommission.org/)<sup>10</sup> (jointcommission.org/), [Colorado Department of Public Health and Environment](http://colorado.gov/cdphe) (colorado.gov/cdphe), and the [Board of Pharmacy](http://colorado.gov/dora/Pharmacy) (colorado.gov/dora/Pharmacy).

**Outcome**

Approved by the Commission on February 8, 2019, this recommendation requires funds for pilot programs to support collaboration between a qualifying hospital or acute care setting (“27-65 designated” facility) and jails, in one urban region and one rural region of the state. There was no action on this recommendation during the FY2019 legislative session.

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<sup>10</sup> The Joint Commission is an independent, not-for-profit organization that accredits and certifies nearly 21,000 health care organizations and programs in the United States.

## Pretrial release recommendations

### FY19-PR01 **Require the use of pretrial risk assessment tools**

Amend §16-4-103 (3) (b), C.R.S., to require that pretrial risk assessments be available and utilized by Judicial Officers in all counties for purposes of setting bond and establishing conditions of release for felony and misdemeanor level offenses. The court shall not use the results of any such instrument as the sole basis for setting type of bond and conditions of release. Other criteria may include those circumstances contained in §16-4-103 (5), C.R.S.

#### Proposed statutory language

Amend C.R.S., §16-4-103 (3) (b). Setting and selection type of bond-criteria.

**(3) (b)** In determining the type of bond and conditions of release, **THE COURT SHALL CONSIDER AN EMPIRICALLY DEVELOPED AND VALIDATED RISK ASSESSMENT** if practicable and available in the jurisdiction, the court shall use an empirically developed risk assessment instrument designed to improve pretrial release decisions by providing to the court information that classifies a person in custody based upon predicted level of risk of pretrial failure. **THE COURT SHALL NOT USE THE RESULTS OF ANY SUCH INSTRUMENT AS THE SOLE BASIS FOR SETTING TYPE OF BOND AND CONDITIONS OF RELEASE. OTHER CRITERIA MAY INCLUDE THOSE CONTAINED IN SUBSECTION (5) OF THIS SECTION.**

#### 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 29, Table 4.1). 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>11</sup> by the Pretrial 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 risk in making these decisions.*

<sup>11</sup> Pretrial Justice Institute. (2015, May). *Issue Brief-Pretrial Risk Assessment: Science Provides Guidance on Assessing Defendants*. Rockville, MD: PJI. (See, [university.pretrial.org/viewdocument/issue-brief-pretrial-1](http://university.pretrial.org/viewdocument/issue-brief-pretrial-1)).

*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>12</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>13</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>14</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>15</sup>*

*Other studies have found that higher-risk defendants who are released with supervision have higher rates of success on pretrial release. For example, one study found that, when controlling for other factors, higher-risk defendants who were released with supervision were 33% less likely to fail to appear in court than their unsupervised counterparts.<sup>16</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."*

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<sup>12</sup> Lowenkamp, C., VanNostrand, M., & Holsinger, A. (2013). *The Hidden Costs of Pretrial Detention*. Houston, TX: Laura and John Arnold Foundation. (See, [nicic.gov/hidden-costs-pretrial-detention](http://nicic.gov/hidden-costs-pretrial-detention)).

<sup>13</sup> See Footnote #12.

<sup>14</sup> Lowenkamp, C., VanNostrand, M., & Holsinger, A., (2013). *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*. Houston, TX: Laura and John Arnold Foundation. (See, [nicic.gov/investigating-impact-pretrial-detention-sentencing-outcomes](http://nicic.gov/investigating-impact-pretrial-detention-sentencing-outcomes)).

<sup>15</sup> 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)).

<sup>16</sup> Lowenkamp, C., & VanNostrand, M. (2013). *Exploring the Impact of Supervision on Pretrial Outcomes*. Houston, TX: Laura and John Arnold Foundation. (See, [nicic.gov/exploring-impact-supervision-pretrial-outcomes](http://nicic.gov/exploring-impact-supervision-pretrial-outcomes)).

A report on promising practices in pretrial services, by the Pretrial Justice Institute and the American Probation and Parole Association,<sup>17</sup> 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.

**Table 4.1. Colorado counties with or without pretrial services and/or assessment (October 2017)**

Summary sheet regarding pretrial services in Colorado – 22 judicial districts, 64 counties

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

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

<sup>17</sup> 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)).

**Outcome**

This recommendation was approved by the Commission on November 9, 2018 and was included in House Bill 2019-1226 (*Bond Reform*). The bill was introduced March 8, 2019 and, although it passed in the House and two Senate committees, the bill “died on the calendar” without further action by the Senate at the end of the FY 2019 Legislative Session.

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**FY19-PR02      Implement pretrial risk assessment processes and training**

The following points are offered as basic implementation guidance for the selection, use, and administration of and training on pretrial risk assessment to all Colorado counties and jurisdictions in order to set bond and establish conditions of release for felony and misdemeanor level offenses:

- The Colorado Pretrial Assessment Tool (CPAT) shall be the recommended assessment tool; however, any jurisdiction may utilize an alternative assessment tool to improve pretrial decision-making subject to the approval of the chief judge of the judicial district.
- The State Court Administrator is responsible to compile an inventory of approved pretrial risk assessments available and authorized for use in Colorado.
- Any alternative tool approved by a chief judge must be empirically developed/validated and consistent with setting the type of bond and conditions of release; however, this does not prohibit a jurisdiction from utilizing additional assessment tools to advance pretrial decisions.
- Any individual authorized to administer pretrial risk assessment for the court shall receive introductory training.
- The Office of the State Court Administrator (SCAO) in consultation with the Colorado Association of Pretrial Service Agencies (CAPS) shall develop and provide standards for training and fidelity measurement of the Colorado Pretrial Assessment Tool (CPAT).
- If an alternative pretrial risk assessment tool is approved for use by the chief judge of a judicial district, the SCAO shall also review and approve any training protocol and plan to ensure measures are in place to measure assessor fidelity to the instrument.
- In order to preserve neutrality in the assessment process, prosecutors and criminal defense attorneys shall not be authorized to administer a pretrial risk assessment for purposes of setting bond and establishing conditions of release.

**Discussion**      Nationally accepted best practice recommends that all jurisdictions should use validated risk assessments to assist courts in making release or detention decisions.<sup>18</sup>

Risk assessment tools are now widely used in criminal justice, but many agencies struggle to implement the tools with fidelity. Training provides information on quality assurance processes necessary to ensure the instrument is accurately measuring client risk, including inter-rater agreement processes to ensure the risk assessment is scored consistently and correctly. Training also helps prepare agencies for future validation studies of their risk assessment instruments.

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<sup>18</sup> For example, see Bureau of Justice Assistance: Public Safety Risk Assessment Clearinghouse ([psrac.bja.ojp.gov](http://psrac.bja.ojp.gov)) and National Center for State Courts: Pretrial Justice Center for Courts – Risk Assessment ([ncsc.org/Microsites/PJCC/Home/Topics/Risk-Assessment.aspx](http://ncsc.org/Microsites/PJCC/Home/Topics/Risk-Assessment.aspx)).



To ensure that risk assessment instruments are accurately measuring client risk, agencies must incorporate training and ongoing coaching and support to sustain scoring accuracy.

**Outcome**

This recommendation was approved by the Commission on November 9, 2018. Aspects of the recommendation were included as part of House Bill 2019-1226. The bill was introduced March 8, 2019 and, although it passed in the House and two Senate committees, the bill “died on the calendar” without further action by the Senate at the end of the FY 2019 Legislative Session. Any non-statutory action on this recommendation is unknown.

**FY19-PR03      Expand pretrial services programs statewide**

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

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

**Proposed  
statutory  
language**

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

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

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

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

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

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

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

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

## Discussion

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

A May 2015 Issue Brief by the Pretrial 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.*

*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>19</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*

<sup>19</sup> See Footnote #12 page 28.

*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.*

*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.*

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

*These studies, taken together, demonstrate the longer-term implications of not accurately and quickly identifying, and then acting upon to mitigate, defendants' risk.*

*Another reason to utilize a defendant's risk score is to make the best use of scarce resources. It is a waste of resources to over-apply conditions to people for whom those conditions are unnecessary to ensure compliance. It is a good use of resources to provide supervision in the community to someone who needs it, when compared to the cost of housing, feeding and providing medical care in jail. Supervision can cost \$3 to \$6 per day. On the other hand, the housing, feeding, and medical care costs of jail are approximately \$50 or more per day."*

**Positive Pretrial Outcomes.** A report by the Legislative Auditor General (State of Utah) profiles jurisdictions that have undertaken pretrial reform:

*"An increasing number of jurisdictions are using risk-based decision-making instruments to enhance pretrial decision success. Studies from four jurisdictions using pretrial risk assessments, along with other pretrial programs, show enhanced court attendance and public safety while releasing more defendants and saving money:*

#### *Washington DC*

- *Savings – \$182 a day per defendant released pretrial rather than incarcerated*
- *Release Rate – 88 percent of pretrial defendants released*
- *Public Safety – 91 percent of defendants remain arrest-free pretrial*
- *Court Appearance – 90 percent of defendants made all scheduled court appearances*

#### *Kentucky*

- *Savings – Up to \$25 million per year*
- *Release Rate – 73 percent of pretrial defendants released*
- *Public Safety – 89 percent did not commit crimes while released*
- *Court Appearance – 84 percent appearance rate*

*Mesa County, CO*

- *Savings – \$2 million per year*
- *Release Rate – Pretrial jail population dropped by 27 percent*
- *Public Safety – Uncompromised despite an increase in the number of defendants released*
- *Court Appearance – 93 percent of lower-risk defendants and 87 percent of high-risk defendants made all court appearances before trial*

*Lucas County, OH*

- *Savings – Not available*
- *Release Rate – Doubled from 14 to 28 percent*
- *Public Safety – Defendants arrested reduced by half from 20 percent to 10 percent*
- *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>20</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 forecasting perspective, the investment in pretrial services saves the state money and enhances public safety.

**Outcome**

This recommendation was approved by the Commission on November 9, 2018 and was included in House Bill 2019-1226. The bill was introduced March 8, 2019 and, although it passed in the House and two Senate committees, the bill “died on the calendar” without further action by the Senate at the end of the FY 2019 Legislative Session.

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<sup>20</sup> Office of the Legislative Auditor General: State of Utah. (2017). *A Performance Audit of Utah's Monetary Bail System* (Report #2017-01). (Retrieved from, [university.pretrial.org/viewdocument/a-performance-audit-of-utahs-moneta](http://university.pretrial.org/viewdocument/a-performance-audit-of-utahs-moneta))

**FY19-PR04 Create a pretrial services alternative for smaller jurisdictions**

This recommends modifying §16-4-106, C.R.S., such that pretrial services shall exist in all counties in Colorado and amend §13-6-201 (1) to conform. A county identified as Class C or D pursuant to §13-6-201, C.R.S., may opt out of state formula funding for the provision of pretrial services and may instead, request that the state judicial department utilize formula funding to provide services on behalf of counties within a judicial district. The recommendation includes these additional elements:

- The judicial department may directly provide services, establish inter-governmental agreements, or contractual agreements necessary to provide services upon request by counties and only upon approval of the chief judge of a judicial district.
- In these instances, judicial districts are authorized to use state appropriations to provide pretrial functions upon formal written request by a local government and upon approval of the chief judge in each judicial district.
- State Judicial shall assure that pretrial services conform to the standards of the State Court Administrators Office and adhere to the underlying purpose of pretrial justice.

**Proposed statutory language**

Modify §16-4-106, C.R.S., to delete (2) and amend (3), and amend §13-6-201 (1).

§16-4-106.

~~(2) The chief judge of any judicial district shall endeavor to consult, on an annual basis, with the county or counties within the judicial district in an effort to support and encourage the development by the county or counties, to the extent practicable and within available resources, of pretrial services programs that support the work of the court and evidence-based decision-making in determining the type of bond and conditions of release.~~

(3) To reduce barriers to the pretrial release of persons in custody whose release on bond with appropriate conditions reasonably assures court appearance and public safety, all counties and cities and counties **SHALL DEVELOP BY JANUARY 1, 2020** are encouraged to develop a pretrial services program in consultation with the chief judge of the judicial district in an effort to establish a pretrial services program that may be utilized by the **COURTS OF THE JUDICIAL DISTRICT**. ~~district court of such county or city and county: Any pretrial services program...before May 31, 1991.~~ **FOR CLASS C OR D COUNTIES IDENTIFIED IN §13-6-201, C.R.S., AND UPON REQUEST OF THE LOCAL GOVERNMENT, THE CHIEF JUDGE OF THE JUDICIAL DISTRICT MAY AUTHORIZE THE PROBATION DEPARTMENT TO UTILIZE FORMULA FUNDING AND PROVIDE FOR THESE FUNCTIONS. THE JUDICIAL DISTRICT MAY DIRECTLY PROVIDE SERVICES, ESTABLISH INTER-GOVERNMENTAL AGREEMENTS, OR CONTRACTUAL AGREEMENTS NECESSARY TO PROVIDE SERVICES.**

§13-6-201 (1).

(1) For such organizational and administrative purposes concerning county courts as are specified in this part 2, **AND FOR THE PURPOSES OF PRETRIAL SERVICES FUNDING AS**

**SPECIFIED IN §16-4-106 (3), C.R.S.,** counties shall be classified as provided in subsection (2) of this section. The classifications established in this section shall not have any effect upon any classifications now provided by law for any other purpose and specifically shall have no effect upon the existing classification of counties for the purpose of fixing judicial salaries for county judges as provided by section 13-30-103.

**Discussion**

Pretrial Supervision strategies to mitigate risk and increase pretrial success are not available in each county throughout the state. In jurisdictions that have a smaller volume of bails set, developing county-based pretrial programs may not be the most effective service delivery model. State judicial probation departments exist in all 22 judicial districts in Colorado and may provide an infrastructure to complete limited pretrial assessment and supervision of pretrial defendants in jurisdictions that do not provide for these services.

*[Please see the table on the next page that organizes counties by A, B, C, D designation for those with or without pretrial supervision services. Also included in the table is the three-year average of bonds set for each county, based on an analysis prepared by the Division of Criminal Justice, Office of Research and Statistics.]*

**Outcome**

This recommendation was approved by the Commission on February 8, 2019 and was included in House Bill 2019-1226. The bill was introduced March 8, 2019 and, although it passed in the House and two Senate committees, the bill “died on the calendar” without further action by the Senate at the end of the FY 2019 Legislative Session.

**Table 4.2. Colorado counties by A, B, C, D designation, with and without pretrial supervision services**

Counties WITHOUT pretrial services (2018)			Counties WITH pretrial services (2018) (funded by county)		
County	3 yr. avg.*	County class**	County	3 yr. avg.*	County class**
Montrose	1107	B	Denver <sup>o</sup>	5684	A
Summit	1219	B	Fremont	1314	B
Eagle	1326	B	La Plata	1864	B
Broomfield	1488	B	Douglas	4142	B
Rio Grande	467	C	Mesa	4627	B
Delta	676	C	Boulder	4997	B
Logan	703	C	Pueblo	5507	B
Otero	800	C	Weld	7429	B
Prowers	889	C	Larimer	8194	B
Las Animas	993	C	Jefferson	9466	B
Morgan	1230	C	Arapahoe	10530	B
Hinsdale	13	D	Adams	11854	B
San Juan	24	D	El Paso	14700	B
Jackson	29	D	Alamosa	876	C
Mineral	43	D	Montezuma	1088	C
Dolores	51	D	Garfield	1846	C
Cheyenne	68	D	Archuleta	389	D
Phillips	78	D	<b>Total</b>	<b>94,507<sup>++</sup></b>	
Kiowa	79	D			
Sedgwick	81	D			
Custer	109	D			
Crowley	113	D			
Ouray	123	D			
Washington	132	D			
Baca	143	D			
Saguache	160	D			
Yuma	186	D			
Costilla	189	D			
Conejos	234	D			
San Miguel	240	D			
Rio Blanco	243	D			
Bent	247	D			
Pitkin	267	D			
Kit Carson	308	D			
Lake	333	D			
Huerfano	371	D			
Grand	387	D			
Elbert	407	D			
Lincoln	411	D			
Park	440	D			
Gunnison	492	D			
Moffat	587	D			
Chaffee	589	D			
Clear Creek	589	D			
Routt	644	D			
Gilpin	684	D			
Teller	825	D			
<b>Total</b>	<b>20,817<sup>+</sup></b>				

**Table notes:**

\* 3 year average of bonds set

\*\* Pursuant to §13-6-201, C.R.S.

+ Counties **without** pretrial services  
Total: 20,817 – Represents 18% of bonds set++ Counties **with** pretrial services  
Total: 94,504 – Represents 82% of bonds set

o Does not include Denver County Court cases



**FY19-PR06      Establish an expedited pretrial release process**

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

***Screening Process and Criteria: Expedited Release***

- Each judicial district shall develop, by December 1, 2019, a screening process to assess a person upon arrival at the county jail for consideration of immediate release without monetary conditions (on a PR bond or on a summons), without appearing before the court, pursuant to release criteria developed within the judicial district.
- Such criteria shall be developed by each judicial district, in conjunction with all stakeholders (five identified in statute and others at the discretion of the chief judge; see proposed §16-4-103(1), C.R.S.) and the State Court Administrator’s Office, and implemented through the administrative order. The criteria shall be objective and shall be guided by the principles of release as outlined in §16-4-104, C.R.S. (*See also CCJJ Recommendations FY19 PR01 and PR02 regarding pretrial risk assessment.*)
- The pretrial assessment process shall not involve extra-judicial decision-making by persons doing the assessment. As is current practice in many jurisdictions in Colorado, a matrix or other objective decision-making scheme should be developed to implement the statutory guiding principles.
- The screening process shall occur in the jurisdiction where the offense occurred or, if under warrant, in the jurisdiction where the warrant was issued as soon as practicable, **but no later than 24 hours, after the individual is received** at the county jail, detention facility or other location where the screening is to occur. It is anticipated that the person will be released within 24 hours.<sup>21</sup>
- When developing the criteria for each judicial district, the chief judge and the stakeholders shall:
  - incorporate the standards as prepared by the Office of the State Court Administrator; and
  - consider the practices in all jurisdictions within and throughout the state to promote some state-wide consistency in implementation, with deviation from core practices only to the extent that it is necessary to address specific issues that exist with the jurisdiction.

<sup>21</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)).

- 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 resulting in a more complicated release process; and
  - to reduce the negative consequences to the person who does not need to be placed in a pod/population.
- Local law enforcement shall be provided the criteria for each judicial district they serve so that the use of summons can be encouraged and so that law enforcement can properly advise the public and any victim of the criteria used.

***Administrative Order: Release Guidance***

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

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

The chief judge is always the final decision-maker regarding the criteria issued in accordance with the administrative order.

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

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

**Proposed  
statutory  
language**

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

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

Any person **WHO IS ARRESTED AND HAS NOT BEEN RELEASED PURSUANT TO 16-4-103, C.R.S.** in custody, and for whom the court has not set bond and conditions of release pursuant to the applicable rule of criminal procedure, and who is not subject to the provisions of section 16-4-101 (5), has the right to a hearing to determine bond and conditions of release. A person in custody may also request a hearing so that bond and conditions of release can be set. Upon receiving the request, the judge shall notify the district attorney immediately of the arrested person’s request, and the district attorney shall have the right to attend and advise the court of matters pertinent to the type of bond and conditions of release to be set. The judge shall also order the appropriate law enforcement agency having custody of the prisoner to bring him or her before the court forthwith, and the judge shall set bond and conditions of release if the offense for which the person was arrested is bailable. It shall not be a prerequisite to bail that a criminal charge of any kind has been filed.

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

- (1) **EACH JUDICIAL DISTRICT SHALL DEVELOP, ON OR BEFORE DECEMBER 1, 2019, A PRETRIAL RELEASE SCREENING PROCESS TO ASSESS EACH PERSON AS SOON AS PRACTICABLE BUT NO LATER THAN 24 HOURS AFTER ADMISSION TO A DETENTION FACILITY. FURTHER, EACH JUDICIAL DISTRICT SHALL DEVELOP WRITTEN CRITERIA ALLOWING FOR THE IMMEDIATE PRETRIAL RELEASE OF CERTAIN DETAINED PERSONS, ON A SUMMONS OR AN UNSECURED PERSONAL RECOGNIZANCE BOND WITHOUT MONETARY CONDITIONS, AFTER THE PRETRIAL ASSESSMENT IS COMPLETED AND WITHOUT AN INITIAL HEARING BEFORE THE COURT. THE CRITERIA FOR RELEASE SHALL BE DEVELOPED IN CONJUNCTION WITH ALL LOCAL STAKEHOLDERS, WHICH SHALL INCLUDE BUT NOT BE LIMITED TO A REPRESENTATIVE OF THE DISTRICT ATTORNEY, THE PUBLIC DEFENDER, THE SHERIFF’S DEPARTMENT, THE PRETRIAL SERVICES PROGRAM, A VICTIM ADVOCATE AND THE STATE COURT ADMINISTRATOR OFFICE, AND SHALL BE IMPLEMENTED THROUGH ADMINISTRATIVE ORDER OF THE CHIEF JUDGE OF THAT JUDICIAL DISTRICT. THE CRITERIA SHALL OUTLINE THE NON-MONETARY CONDITIONS OF BOND REASONABLY NECESSARY TO ASSURE COURT APPEARANCE AND SAFETY OF ANY PERSON OR THE COMMUNITY BASED ON THE ASSESSMENT.**
- (2) **THE OFFICE OF THE STATE COURT ADMINISTRATOR SHALL BE RESPONSIBLE FOR DEVELOPING STATE-WIDE STANDARDS AND GUIDELINES FOR THE DEVELOPMENT OF BOTH THE PRETRIAL RELEASE SCREENING (Note: See also CCJJ Recommendation FY19 PR01.) AND THE WRITTEN CRITERIA FOR PRETRIAL RELEASE AS IMPLEMENTED THROUGH ADMINISTRATIVE ORDER IN EACH JUDICIAL DISTRICT, AS PROVIDED IN**

**SECTION (1). THE STATE-WIDE STANDARDS AND GUIDELINES SHALL BE DEVELOPED IN CONJUNCTION WITH A REVIEW OF THE RELEVANT RESEARCH AND BEST PRACTICES MODELS THROUGHOUT THE COUNTRY, WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO:**

- (a) THE IMPACT OF DETENTION ON LOW-RISK PERSONS AND RECIDIVISM;**
- (b) THE NATIONAL AND STATE DATA AND RESEARCH REGARDING THE USE OF NON-MONETARY CONDITIONS OF BOND AS IT RELATES TO SAFETY OF ANY PERSON OR THE COMMUNITY AND APPEARANCE RATES; AND**
- (c) THE RELEVANT CASE LAW AND NATIONAL BEST PRACTICES REGARDING THE USE OF MONETARY CONDITIONS OF BOND.**

**(3) WHEN DEVELOPING THE PRETRIAL RELEASE SCREENING PROCESS AND THE WRITTEN CRITERIA FOR PRETRIAL RELEASE, THE CHIEF JUDGE OF THE JUDICIAL DISTRICT AND THE LOCAL STAKEHOLDERS SHALL:**

- (a) DEVELOP CRITERIA CONSISTENT WITH THE PROVISIONS OF 16-4-104, C.R.S., AND WHICH ARE OBJECTIVE IN NATURE TO PROVIDE FOR CONSISTENT AND FAIR IMPLEMENTATION;**
- (b) CONSIDER THE STANDARDS AND GUIDELINES AS PREPARED BY THE OFFICE OF THE STATE COURT ADMINISTRATOR; AND**
- (c) CONSIDER THE PRACTICES IN ALL JURISDICTIONS WITHIN AND THROUGHOUT THE STATE TO ALLOW FOR SOME STATE-WIDE CONSISTENCY IN IMPLEMENTATION, WITH DEVIATION FROM CORE PRACTICES ONLY TO THE EXTENT THAT IT IS NECESSARY TO ADDRESS SPECIFIC ISSUES THAT EXIST WITH THE JURISDICTION.**

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

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

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

## Discussion

A May 2015 Issue Brief by the Pretrial 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.*

*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>22</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.*

*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.*

*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>22</sup> See Footnote #12 page 28.

*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.*

**Proposed  
statutory  
language**  
(continued)

[Existing statutory language to be deleted by Recommendation FY19-PR06]

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

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

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

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

(b) In determining the type of bond and conditions of release, if practicable and available in the jurisdiction, the court shall use an empirically developed risk assessment instrument designed to improve pretrial release decisions by providing to the court information that classifies a person in custody based upon predicted level of risk of pretrial failure:

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

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

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

- (c) Consider all methods of bond and conditions of release to avoid unnecessary pretrial incarceration and levels of community-based supervision as conditions of pretrial release.
- (5) The court may also consider the following criteria as appropriate and relevant in making a determination of the type of bond and conditions of release:
  - (a) The employment status and history of the person in custody;
  - (b) The nature and extent of family relationships of the person in custody;
  - (c) Past and present residences of the person in custody;
  - (d) The character and reputation of the person in custody;
  - (e) Identity of persons who agree to assist the person in custody in attending court at the proper time;
  - (f) The likely sentence, considering the nature and the offense presently charged;
  - (g) The prior criminal record, if any, of the person in custody and any prior failures to appear for court;
  - (h) Any facts indicating the possibility of violations of the law if the person in custody is released without certain conditions of release;
  - (i) Any facts indicating that the defendant is likely to intimidate or harass possible witnesses; and
  - (j) Any other facts tending to indicate that the person in custody has strong ties to the community and is not likely to flee the jurisdiction.
- (6) When a person is charged with an offense punishable by fine only, any monetary condition of release shall not exceed the amount of the maximum fine penalty.

**Outcome**

This recommendation was approved by the Commission on January 11, 2019 and was included in House Bill 2019-1226. The bill was introduced March 8, 2019 and, although it passed in the House and two Senate committees, the bill “died on the calendar” without further action by the Senate at the end of the FY 2019 Legislative Session.

**FY19-PR07      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 Recommendation FY19-PR06), this recommendation proposes the revision of the following statutory elements (in §16-4-104, -107, 7-109, C.R.S.) related to the initial bond hearing process, including the considerations of the conditions of monetary bond:

- Assess the person for risk before the hearing, require the court to consider financial circumstances of persons when setting bond, and presume release on bond without monetary conditions unless no reasonable non-monetary conditions will address public safety and flight risk [**Element 7.1**].
- Require the filing of felony charges within three days, excluding Saturdays, Sundays and legal holidays, unless good cause is shown [**Element 7.2**].
- 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 7.3**].
- Create an expedited docket for cases where the defendant is in custody on a monetary bond that he/she has not posted [**Element 7.4**].

*[Each "ELEMENT" (7.1 through 7.4) is described below in greater detail with its proposed statutory language immediately appending the description.]*

**Element 7.1      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; (current law; *See also CCJJ Recommendations FY19-PR01 and PR02*)
- 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 person or the community; or
  - that there is a substantial risk that the person will not appear in court as required; or
  - that there is a substantial risk that the person will attempt to obstruct the criminal justice process; and
  - 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 appear in court as required, and that the person will not attempt to obstruct the criminal justice process.

**Element 7.1**  
**proposed**  
**statutory**  
**language**

In §16-4-104, C.R.S., insert new subsections (1) and (2) and delete old subsections (2) and (3); renumber and revise old subsection (1) to new subsection (4); and move old subsection (4) to subsection (3).

**16-4-104. INITIAL HEARING – TYPES OF BOND SET BY THE COURT – FACTORS FOR SETTING OF CONDITIONS OF BOND – RIGHT TO COUNSEL**

**(1) AT THE INITIAL HEARING, IF THE PERSON IS NOT RELEASED PURSUANT TO THE PROVISIONS OF 16-4-103, C.R.S., THE COURT SHALL DETERMINE THE TYPE OF BOND AND THE CONDITIONS OF RELEASE. IN MAKING THAT DETERMINATION, THE COURT SHALL PRESUME THE RELEASE OF THE PERSON WITH THE LEAST RESTRICTIVE CONDITIONS AND WITHOUT THE USE OF ANY MONETARY CONDITIONS OF BOND UNLESS THE COURT FINDS:**

- (a) THAT THE PERSON POSES A SUBSTANTIAL RISK OF DANGER TO THE SAFETY OF ANY PERSON OR THE COMMUNITY; OR**
- (b) THAT THERE IS A SUBSTANTIAL RISK THAT THE PERSON WILL NOT APPEAR IN COURT AS REQUIRED; OR**
- (c) THAT THERE IS A SUBSTANTIAL RISK THAT THE PERSON WILL ATTEMPT TO OBSTRUCT THE CRIMINAL PROCESS; AND**
- (d) 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 APPEAR IN COURT AS REQUIRED, AND THAT THE PERSON WILL NOT ATTEMPT TO OBSTRUCT THE CRIMINAL JUSTICE PROCESS.**

**(2) IN MAKING THE DETERMINATION ABOUT THE TYPE OF BOND AND CONDITIONS OF RELEASE, THE COURT SHALL CONSIDER:**

- (a) THE PERSON’S RISK ASSESSMENT AS PROVIDED BY AN EMPIRICALLY DEVELOPED AND VALIDATED RISK ASSESSMENT INSTRUMENT OR INSTRUMENTS; (Note: See also CCJJ Recommendations FY19-PR01 and PR02 regarding pretrial risk assessment.)**
- (b) THE INDIVIDUAL CIRCUMSTANCES OF THE DEFENDANT INCLUDING HIS OR HER FINANCIAL CIRCUMSTANCES;**
- (c) THE NATURE AND SEVERITY OF THE ALLEGED OFFENSE;**

- (d) VICTIM INPUT, IF RECEIVED;
  - (e) ALL METHODS OF RELEASE TO AVOID UNNECESSARY PRETRIAL INCARCERATION AND TO AVOID UNNECESSARY LEVELS OF SUPERVISION AS CONDITIONS OF PRETRIAL RELEASE;
  - (f) THE WRITTEN CRITERIA FOR PRETRIAL RELEASE AS DEVELOPED BY THE JUDICIAL DISTRICT;
  - (g) THE EMPLOYMENT STATUS AND HISTORY OF THE PERSON IN CUSTODY;
  - (h) THE NATURE AND EXTENT OF FAMILY RELATIONSHIPS OF THE PERSON IN CUSTODY;
  - (i) PAST AND PRESENT RESIDENCES OF THE PERSON IN CUSTODY;
  - (j) THE CHARACTER AND REPUTATION OF THE PERSON IN CUSTODY;
  - (k) IDENTITY OF PERSONS WHO AGREE TO ASSIST THE PERSON IN CUSTODY IN ATTENDING COURT AT THE PROPER TIME;
  - (l) THE LIKELY SENTENCE, CONSIDERING THE NATURE AND THE OFFENSE PRESENTLY CHARGED, ESPECIALLY IF THE DEFENDANT IS NOT LIKELY TO BE SENTENCED TO INCARCERATION;
  - (m) THE PRIOR CRIMINAL RECORD, IF ANY, OF THE PERSON IN CUSTODY;
  - (n) ANY PRIOR FAILURES THAT ARE RELEVANT TO THE DEFENDANT'S CURRENT ABILITY TO APPEAR IN COURT;
  - (o) ANY FACTS INDICATING THE POSSIBILITY OF VIOLATIONS OF THE LAW IF THE PERSON IN CUSTODY IS RELEASED WITHOUT CERTAIN CONDITIONS OF RELEASE;
  - (p) ANY FACTS INDICATING THAT THE DEFENDANT IS LIKELY TO INTIMIDATE OR HARASS POSSIBLE WITNESSES; AND
  - (q) ANY OTHER FACTS TENDING TO INDICATE THAT THE PERSON IN CUSTODY HAS STRONG TIES TO THE COMMUNITY AND IS NOT LIKELY TO FLEE THE JURISDICTION.
- (3) 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) or (2)(a), C.R.S., may not attend a bail hearing until the person is no longer intoxicated or under the influence of drugs. The person shall be held in custody until the person may safely attend such hearing.
- (4) **THE TYPES OF BOND THAT MAY BE SET BY THE COURT INCLUDE:** (1) The court shall determine, after consideration of all relevant criteria, which of the following types of bond is appropriate for the pretrial release of a person in custody, subject to the relevant statutory conditions of release listed in section 16-4-105. The person may be released upon execution of:
- (a) An unsecured personal recognizance bond **WHICH MAY INCLUDE** in an amount specified by the court. The court may require additional obligors on the bond as a condition of the bond.
  - (b) An unsecured personal recognizance bond with additional nonmonetary conditions of release designed specifically to reasonably ensure the appearance of the person in court and the safety of any person or persons or the community;

- (c) A bond with secured monetary conditions **SUBJECT TO THE PROVISIONS OF SUBSECTION (1)**, ~~when reasonable and necessary to ensure the appearance of the person in court or the safety of any person or persons or the community. The financial conditions shall state an amount of money that the person must post with the court in order for the person to be released.~~ **HOWEVER, IF THE BOND HAS MONETARY CONDITIONS**, the person **SHALL** ~~may~~ 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 person to be released, unless the court makes factual findings on the record with respect to the person to be released that a certain method of bond, as selected by the court, is necessary to **REASONABLY** ensure the appearance of the person in court and the safety of any **PERSON OR PERSONS IN THE COMMUNITY**: ~~person, persons, or the community~~:
- (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 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 (3.5), C.R.S.
- (d) A bond with secured real estate conditions when it is determined that release on an unsecured personal recognizance bond without monetary conditions will not reasonably ensure the appearance of the person in court or the safety of any person or persons or the community. For a bond secured by real estate, the bond shall not be accepted by the clerk of the court unless the record owner of such property presents to the clerk of the court the original deed of trust as set forth in subparagraph (IV) of this paragraph (d) 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 the following, which shall constitute a material part of the bond:
- (I) The current notice of valuation for such real estate prepared by the county assessor pursuant to section 39-5-121, C.R.S.; and
  - (II) Evidence of title issued by a title insurance company or agent licensed pursuant to article 11 of title 10, C.R.S., within thirty-five days after the date upon which the bond is filed; and
  - (III) A sworn statement by the owner of the real estate that the real estate is security for the compliance by the accused with the primary condition of the bond; and

(IV) A deed of trust to the public trustee of the 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 shall name the clerk of the court approving the bond as beneficiary. The deed of trust shall secure an amount equal to one and one-half times the amount of the bond.

~~(2) Unless the district attorney consents or unless the court imposes certain additional individualized conditions of release as described in section 16-4-105, a person must not be released on an unsecured personal recognizance bond pursuant to paragraph (a) of subsection (1) of this section under the following circumstances:~~

~~(a) The person is presently free on another bond of any kind in another criminal action involving a felony or a class 1 misdemeanor;~~

~~(b) The person has a record of conviction of a class 1 misdemeanor within two years or a felony within five years, prior to the bail hearing; or~~

~~(c) The person has willfully failed to appear on bond in any case involving a felony or a class 1 misdemeanor charge in the preceding five years.~~

~~(3) A person may not be released on an unsecured personal recognizance bond if, at the time of such application, the person is presently on release under a surety bond for felony or class 1 misdemeanor charges unless the surety thereon is notified and afforded an opportunity to surrender the person into custody on such terms as the court deems just under the provisions of section 16-4-108.~~

*[NOTE: The following subsection (4) is moved without modification to subsection (3) of this same section.]*

~~(4) 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) or (2)(a), C.R.S., may not attend a bail hearing until the person is no longer intoxicated or under the influence of drugs. The person shall be held in custody until the person may safely attend such hearing.~~

## **Element 7.2      Require the filing of felony charges within three working days**

Eliminates 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 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 7.2**  
**proposed**  
**statutory**  
**language**

Replace subsection (1) of §16-4-107, C.R.S. and delete subsection (2).

16-4-107. **TIME FRAMES FOR COMMENCEMENT OF ACTION** Hearing after setting of monetary conditions of bond

**(1) AFTER THE INITIAL HEARING AS PROVIDED BY 16-4-102, C.R.S., THE COURT SHALL ORDER THAT THE COMMENCEMENT OF THE CRIMINAL PROSECUTION BY THE FILING OF A COMPLAINT OR INFORMATION, PURSUANT TO THE PROVISIONS OF 16-5-101, C.R.S., SHALL TAKE PLACE WITHIN 3 DAYS OF THE INITIAL HEARING, EXCLUDING SATURDAY, SUNDAY AND LEGAL HOLIDAYS, UNLESS GOOD CAUSE IS SHOWN TO THE COURT FOR ADDITIONAL TIME OR THE PARTIES AGREE TO ADDITIONAL TIME.** If a person is in custody and the court imposed a monetary condition of bond for release, and the person, after seven days from the setting of the monetary condition of bond, is unable to meet the monetary obligations of the bond, the person may file a written motion for reconsideration of the monetary conditions of the bond. The person may only file the written motion pursuant to this section one time during the pendency of the case and may only file the written motion if he or she believes that, upon presentation of evidence not fully considered by the court, he or she is entitled to a personal recognizance bond or an unsecured bond with conditions of release or a change in the monetary conditions of bond. The court shall promptly conduct a hearing on this motion for reconsideration, but the hearing must be held within fourteen days after the filing of the motion. However, the court may summarily deny the motion if the court finds that there is no additional evidence not fully considered by the court presented in the written motion. In considering the motion, the court shall consider the results of any empirically developed risk assessment instrument.

~~(2) Nothing in this section shall preclude a person from filing a motion for relief from a monetary condition of bond pursuant to section 16-4-109 at any time during the pendency of the case.~~

**Element 7.3**      **Require reconsideration of bond**

Require a reconsideration 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. This should protect against unnecessary detentions for long periods of time where court might think person was able to make a monetary bond and they cannot make. Motions shall be in writing in instances of a VRA case.

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 see 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.)

**Element 7.3**  
**proposed**  
**statutory**  
**language**

Revise §16-4-109, C.R.S., subsections (1) through (4) and subsection (6). New paragraphs numbering, (4)(b) and (4)(c) are inserted with minor modifications to statutory language.

[NOTE: Revisions introduced by FY19-PR06 to subsection (5) are also shown here.]

**16-4-109. HEARING AFTER SETTING OF A MONETARY CONDITION OF BOND** – reduction or increase of monetary conditions of bond – change in type of bond or conditions of bond – **definition of bonding and release commissioner** definitions

(1) **THE DEFENDANT, THE PROSECUTING ATTORNEY, OR THE BONDING AND RELEASE COMMISSIONER MAY ASK FOR THE REVIEW AND MODIFICATION OF ANY MONETARY OR NON-MONETARY CONDITION OF BOND IF NEW INFORMATION IS DISCOVERED THAT WAS NOT PRESENTED AT THE TIME OF THE ORIGINAL SETTING OF BOND AND CONDITIONS OF RELEASE OR IF CIRCUMSTANCES HAVE CHANGED SINCE THE COURT MADE THE BOND DETERMINATION AND THIS NEW INFORMATION OR CHANGE IN CIRCUMSTANCES HAS A BEARING ON WHETHER THE CONDITION OF BOND IS REASONABLE AND NECESSARY PURSUANT TO THE PROVISIONS OF THIS SECTION.**

Upon application by the district attorney or the defendant, the court before which the proceeding is pending may increase or decrease the financial conditions of bond, may require additional security for a bond, may dispense with security theretofore provided, or may alter any other condition of the bond.

(2) **REQUESTS FOR REVIEW OR MODIFICATION OF A MONETARY OR NON-MONETARY CONDITION OF BOND MAY BE MADE ORALLY OR IN WRITING WITH REASONABLE NOTICE TO THE OPPOSING PARTY. NOTWITHSTANDING, IF THE CASE ALLEGES A CRIME AS DEFINED IN 24-4.1-302, C.R.S., THE REQUEST FOR REVIEW SHALL BE IN WRITING.** Reasonable notice of an application for modification of a bond by the defendant shall be given to the district attorney.

(3) **THE COURT SHALL HEAR THE REQUEST FOR REVIEW OF A MONETARY CONDITION OF BOND ON AN EXPEDITED BASIS AND MAKE A DETERMINATION ON THE RECORD IN ORDER THAT THE DEFENDANT MAY EXERCISE HIS RIGHT TO APPEAL PURSUANT TO 16-4-204, C.R.S. OR ANY OTHER AVAILABLE APPELLATE REMEDIES.** Reasonable notice of application for modification of a bond by the district attorney shall be given to the defendant, except as provided in subsection (4) of this section.

(4) (a) Upon verified application by the district attorney or a bonding **AND RELEASE** commissioner stating facts or circumstances constituting a breach or a threatened breach of any of the conditions of the bond, 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 application.

(b) Upon issuance of the warrant, the bonding **AND RELEASE** commissioner shall notify the bail bond agent of record by electronic mail to 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 this section.

(c) If a bonding **AND RELEASE** commissioner files an application for a hearing pursuant to this subsection (4), the bonding **AND RELEASE** commissioner shall notify the district attorney, for the jurisdiction in which the application is made, of the application within twenty-four hours following the filing of the application.

[NOTE: The revision to this subsection (5) introduced by FY19-PR06 is also shown here.]

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

(6) (5) The district attorney **AND THE DEFENDANT AND HIS OR HER COUNSEL HAVE** has the right to appear at all hearings seeking modification of the terms and conditions of bond and may advise the court on all pertinent matters during the hearing.

**Element 7.4 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 shall 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 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 at the county jail.

**Element 7.4 proposed statutory language**

Revise §16-4-107, C.R.S. by adding subsection (2)

[NOTE: See an additional revision to this same section 107 in Element 7.2.]

**16-4-107. TIME FRAMES FOR COMMENCEMENT OF ACTION – DOCKET PRECEDENCE** Hearing after setting of monetary conditions of bond

[NOTE: The revision to this subsection (1), introduced in Element 7.2, is also shown here.]

- (1) **AFTER THE INITIAL HEARING AS PROVIDED BY 16-4-102, C.R.S., THE COURT SHALL ORDER THAT THE COMMENCEMENT OF THE CRIMINAL PROSECUTION BY THE FILING OF A COMPLAINT OR INFORMATION, PURSUANT TO THE PROVISIONS OF 16-5-101, C.R.S., SHALL TAKE PLACE WITHIN 3 DAYS OF THE INITIAL HEARING, EXCLUDING SATURDAY, SUNDAY AND LEGAL HOLIDAYS, UNLESS GOOD CAUSE IS SHOWN TO THE COURT FOR ADDITIONAL TIME OR THE PARTIES AGREE TO ADDITIONAL TIME.**
- (2) **DEFENDANTS IN CUSTODY SHALL HAVE SCHEDULING PRECEDENCE OVER ALL OTHER MATTERS FOR PURPOSES OF LITIGATED HEARINGS AND TRIALS, SUBJECT TO THE PROVISIONS OF 18-3-411, C.R.S. AND SPEEDY TRIAL CONSIDERATIONS.**

- (1) If a person is in custody and the court imposed a monetary condition of bond for release, and the person, after seven days from the setting of the monetary condition of bond, is unable to meet the monetary obligations of the bond, the person may file a written motion for reconsideration of the monetary conditions of the bond. The person may only file the written motion pursuant to this section one time during the pendency of the case and may only file the written motion if he or she believes that, upon presentation of evidence not fully considered by the court, he or she is entitled to a personal recognizance bond or an unsecured bond with conditions of release or a change in the monetary conditions of bond. The court shall promptly conduct a hearing on this motion for reconsideration, but the hearing must be held within fourteen days after the filing of the motion. However, the court may summarily deny the motion if the court finds that there is no additional evidence not fully considered by the court presented in the written motion. In considering the motion, the court shall consider the results of any empirically developed risk assessment instrument.
- (2) Nothing in this section shall preclude a person from filing a motion for relief from a monetary condition of bond pursuant to section 16-4-109 at any time during the pendency of the case.

**Outcome**

This recommendation was approved by the Commission on January 11, 2019 and was included in House Bill 2019-1226. The bill was introduced March 8, 2019 and, although it passed in the House and two Senate committees, the bill “died on the calendar” without further action by the Senate at the end of the FY 2019 Legislative Session.



**FY19-PR08      Encourage best practices for pretrial training and data collection**

This recommendation proposes to improve adult pretrial-related services throughout the state of Colorado through education and improved data collection, this recommendation proposes the following:

- Request the State Court Administrator’s Office (SCAO) to establish, identify, and develop a core curriculum around the best practices of pretrial and the pretrial process to disseminate to participating stakeholders;
- Encourage major pretrial stakeholders to participate in new hire and regular pretrial training via the SCAO curriculum. The major stakeholders recommended for inclusion are: Colorado District Attorneys’ Council (CDAC), SCAO, State Public Defender, Alternate Defense Council, Pretrial Services, and law enforcement;
- Recommend the SCAO have primary oversight over curriculum development and maintenance, dissemination, and follow-up of individual stakeholder training protocols;
- Recommend the SCAO implement evaluation protocols assessing the effectiveness of pretrial process through appropriate and data collection procedures.

**Discussion**

One of the potential critical points of the 2013 legislation on pretrial reform is the lack of or inconsistent training/education where high turnover occurs at all levels ranging from pretrial services staff to judges. There are many who cannot implement the original reforms properly or evolve with continuing reforms because they do not know enough about the complexities and importance of the bail process. It is consistently noted that “buy-in” is an important factor in building and sustaining best practices in bail and pretrial; however, maintaining the “buy-in” from key justice system members is just as crucial.<sup>23</sup> Past and future legislation around pretrial reform will remain inadequate without this important element of education. Although the importance of educating the public is a frequent topic of discussion,<sup>24</sup> on this topic, but the practitioners and major stakeholders often lack consistent and frequent education on best practices in pretrial. The proposed recommendation intends to help close the education gap around pretrial by streamlining and centralizing a core curriculum.

To properly establish best practices pretrial training, it is necessary to have a single entity who is responsible for establishing, developing, and maintaining a core curriculum. There are many resources and templates available to establish a basic “Pretrial 101” curriculum.<sup>25</sup> It is suggested here that the SCAO serve as the primary training administrator. This comports with the functions of the SCAO, including, “to develop and implement standards and guidelines” for the entities of the Colorado Judicial Branch.<sup>26</sup> Once established and

<sup>23</sup> Pretrial Justice Institute. (2017). *Improving Pretrial Justice Using Existing Resources: A Case Study from St. Mary's County, Maryland*. Rockville, MD: PJI. (See, [university.pretrial.org/viewdocument/improving-pretrial-justice-using-ex](http://university.pretrial.org/viewdocument/improving-pretrial-justice-using-ex)).

<sup>24</sup> Pretrial Justice Institute. (2016). *The PJI Approach to Improving Pretrial Justice*. Rockville, MD: PJI. (see, [university.pretrial.org/viewdocument/the-pji-approach-to-improving-pretr](http://university.pretrial.org/viewdocument/the-pji-approach-to-improving-pretr)).

<sup>25</sup> For the purpose of this recommendation, “Pretrial 101” will be used to generically refer to a succinct but comprehensive training curriculum that covers bail and pretrial processes and best practices, and would need to be created and/or in partnership from other resources (for example, PJI’s “Bail 101” program).

<sup>26</sup> From functions of the Colorado Judicial Branch, Office of the State Court Administrator listed at, [courts.state.co.us/Administration/Index.cfm](http://courts.state.co.us/Administration/Index.cfm).

ready to be disseminated, participating stakeholders would benefit more directly from only making minor localized adjustments to the training while still maintaining the core learning objectives as established by the SCAO.

Upon development of the curriculum, this recommendation next proposes the state encourage the following bail-related stakeholders within the criminal justice system in support of the pretrial process to independently provide consistent and regular training on pretrial practices: 1) Pretrial Services; 2) CDAC; 3) SCAO; 4) State Public Defender; and 5) Law Enforcement.<sup>27</sup> Including law enforcement as an additional stakeholder is critical to the success of pretrial reform as officers are often in a discretionary decision-making status regarding summons vs. arrest procedures which impacts bail decisions. Further, many counties currently utilize sheriff's deputies for bail risk assessment.

It is proposed here that the SCAO continue to serve as the primary branch of oversight over the pretrial training. It is noted that the SCAO would not administrate the training, but rather act as facilitator. Training would only be "mandated" at the individual stakeholder levels. Although the individual stakeholders are responsible for ensuring the training is being conducted appropriately, the SCAO would provide routine updates to the curriculum as well as facilitate stakeholder gatherings to ensure all engaged parties continue the conversations of best practices within bail. For example, the SCAO could facilitate an annual "pretrial conference". Ultimately the goal would be to encourage participation and engagement in pretrial training and education.

Finally, once a training regimen has been established, it is imperative that the effectiveness of the training and of the overall pretrial practice in Colorado be evaluated. It is recommended here that the SCAO is also the best entity to do this. Currently, there is a statutory and legislative requirement for pretrial services to submit an annual report (to the SCAO).<sup>28</sup> However, it is suggested these reports may have little value in their current use. Data collection should be modified to more narrowly assess effectiveness of bail and pretrial practices around the learning objectives of the "Pretrial 101" curriculum developed by the SCAO.

Regarding a proposed time-line, this recommendation can be broken down into two parts. The first part is a time-line proposal for launching a training regimen. Specifically, the establishment of a training curriculum and initial achievement of training is proposed as follows:

- 1) A standardized "Pretrial 101" curriculum be established as a template for all stakeholders to utilize by June 1, 2019.
- 2) All current judges/magistrates receive "Pretrial 101" training by December 31, 2019.
- 3) "Pretrial 101" training be added to POST training by December 31, 2019.
- 4) Establish improved data collection processes by December 31, 2019.

<sup>27</sup> It is noted that there may be some exceptions to those who should receive training. For example, not all judicial officers have a criminal docket and do not deal with bail. These exclusions would be determined within each of the individual elements.

<sup>28</sup> See Colorado House Bill 2013-1236, Colorado Senate Bill 2017-234, and §16-4-106 (6), C.R.S.

The second part proposes the state encourage the following minimum guidelines to achieve a sustainable training process in support of best practices in pretrial:

- 1) Each stakeholder may adjust or expand upon the “Pretrial 101” training template as established by the SCAO as is appropriate and/or relevant to their local mission, but they should aim to meet the minimum criteria established in the curriculum.<sup>29</sup>
- 2) Each participating stakeholder may also offer trainings on a more frequent basis, but should at least offer it for new hires and annually.
- 3) Each of the participating stakeholders shall offer “Pretrial 101” as part of the regular/probationary training for all new hires who are critical in the bail process.
  - a. All new hires should receive “Pretrial 101” training within 6 months of their hire date or as close thereto as possible.
  - b. Any new judicial appointments should receive “Pretrial 101” training within 6 months of their appointment or as close thereto as possible.
- 4) Refresher training on “Pretrial 101” will be encouraged on an annual basis.
  - a. The SCAO may implement a certification process to help ensure compliance.
  - b. If someone has received “new hire” training within 6 months of the annual training, they should not be required to receive that annual training.
  - c. The annual refresher training may be provided on a rotational basis.
  - d. The SCAO may facilitate an annual pretrial conference which could serve as refresher training.

**Outcome**

The recommendation was approved by the Commission on January 11, 2019. This recommendation requires collaboration between Office of the State Court Administrator (SCAO) and other stakeholders, including: Colorado District Attorneys’ Council (CDAC), State Public Defender, Alternate Defense Council, Pretrial Services, and law enforcement. This recommendation has not been implemented.

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<sup>29</sup> An electronic or “webinar” training program shall be considered.

**FY19-PR09 Clarify public defender and district attorney involvement in bail hearings**

This recommends to amending §16-4-104, C.R.S., to clarify in statute that a person is entitled to counsel at the initial bail setting hearing, and that counsel shall have adequate time to prepare for an individualized hearing on bail. Retain language that the district attorney has the right to appear and pretrial information shall be shared.

**Proposed statutory language**

Append §16-4-104, C.R.S. with subsections **(4)**, **(5)**, and **(6)**.

- (4) AT THE INITIAL HEARING, THE PERSON SHALL HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY AND SHALL BE ADVISED OF THE POSSIBLE CHARGES, PENALTIES AND HIS OR RIGHTS AS SPECIFIED IN RULE 5, 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 SHALL HAVE THE RIGHT TO BE REPRESENTED BY THE PUBLIC DEFENDER AT THAT HEARING. ADDITIONALLY, THE COURT SHALL PROVIDE THE PUBLIC DEFENDER SUFFICIENT TIME TO PREPARE FOR AND PRESENT AN INDIVIDUALIZED ARGUMENT REGARDING THE RELEASE OF THE PERSON AND ANY 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 ON BAIL AND CONDITIONS OF RELEASE AND ANY OTHER RELEVANT INFORMATION.**
- (6) PRIOR TO THE INITIAL HEARING, THE PERSON, PROGRAM OR AGENCY THAT HAS CONDUCTED THE PRETRIAL RELEASE SCREENING SHALL PROVIDE TO THE PROSECUTION AND THE DEFENSE ANY AND ALL INFORMATION GATHERED REGARDING THE PERSON IN CUSTODY WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, THE RESULTS FROM ANY EMPIRICALLY-DEVELOPED AND VALIDATED RISK ASSESSMENT INSTRUMENT AND THE ARREST AFFIDAVIT OR OTHER PROBABLE CAUSE STATEMENT.**

**Discussion**

Pursuant to CJD 04-04,<sup>30</sup> if a person is in custody and cannot post or is not allowed bail, the Public Defender, or Alternate Defense Counsel if the Public Defender has determined that a conflict exists and has notified ADC that conflict representation is necessary, may automatically elect to represent that person and will notify the court, either verbally or in writing, of the circumstances. The person need not complete a JDF 208<sup>31</sup> until and unless the person is released from custody. If the person is released from custody, then all provisions under Section II, Indigency Determination – Out of Custody, apply.

<sup>30</sup> Chief Justice Directive, 04-04: Appointment of State-Funded Counsel in Criminal Cases and for Contempt of Court. (See “Chief Justice Directives” at, [courts.state.co.us/Courts/Supreme\\_Court/cjds/index.cfm](https://courts.state.co.us/Courts/Supreme_Court/cjds/index.cfm)).

<sup>31</sup> Form JDF 208: Application for Public Defender, Court-Appointed Counsel, or Guardian Ad Litem. (See, “Apply for a Public Defender” at, [courts.state.co.us/Forms/Forms\\_List.cfm?Form\\_Type\\_ID=256](https://courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=256)).

However, in certain jurisdictions, the court is not allowing PD to appear for first advisements or not notifying the PD when people are in custody and a hearing to set bond is to be held. The need for counsel is important at all critical stages and bail setting is a critical stage. Also, the courts cannot give a pro forma gesture to Gideon and the need for adequate representation by not allowing counsel enough time to interview and prepare for a bail hearing.

Therefore, it is important to clarify the statutory language to allow for public defenders to appear at all first appearances and for all bail setting hearings for persons in custody. The statute should also require the court to notify the state public defender for that jurisdiction of all bail setting hearings and require the court to give the public defender/defense counsel sufficient time prior to all first appearances to interview clients in order that they might present client-specific individualized bail arguments to the court.

The language also needs to be clear that the DA has the right to be present at all hearings on bail and that the information from pretrial services or other investigation shall be provided to both parties.

**Outcome**

This recommendation was approved by the Commission on January 11, 2019 and was included in House Bill 2019-1226. The bill was introduced March 8, 2019 and, although it passed in the House and two Senate committees, the bill “died on the calendar” without further action by the Senate at the end of the FY 2019 Legislative Session.

**FY19-PR10 Create a statewide court date reminder system**

This recommendation proposes the amendment of §13-3-101 (11), C.R.S., to require that on or before July 1, 2020, the state court administrator shall develop and manage a statewide court date reminder system that:

- Reminds criminal defendants to appear for their scheduled court hearings in the county and district courts of the state (Note: Denver County and Municipal Courts may be excluded from this requirement.), and
- Includes a convenient and regular process to update defendant contact information and provide multiple contact options with the capability to reach all defendants using current (for example, reminders sent by text, email, and/or phone call) and emerging technologies.

**Proposed statutory language**

Amend 13-3-101 (11), C.R.S., State court administrator.

**(11) ON OR BEFORE JULY 1, 2020 THE STATE COURT ADMINISTRATOR SHALL DEVELOP A COURT REMINDER PROGRAM WITH THE OBJECTIVE TO REMIND CRIMINAL DEFENDANTS IN COUNTY AND DISTRICT COURTS, EXCEPT FOR THE DENVER COUNTY COURT, TO APPEAR AT EACH OF THEIR SCHEDULED COURT APPEARANCES.**

*[NOTE: This statutory language is intentionally broad to allow the SCAO and stakeholders an opportunity to develop a tailored and effective court reminder program.]*

**Discussion**

Several jurisdictions across the country and in Colorado have adopted a court date reminder process. Court reminders are widely regarded as a research-informed pretrial practice that can increase court appearance rates. The use of court date reminders is included in both the ABA Standards for Criminal Justice-Pretrial Release [Standard 10-1.10(k)]<sup>32</sup> and the NAPSA Standards on Pretrial Release [Standard 3.5(a)(vi)].<sup>33</sup>

A summary of the reasons to provide reminder notices is offered by the Pretrial Justice Center for Courts in Pretrial Justice Brief #10: Use of Court Date Reminder Notices to Improve Court Appearance Rates:<sup>34</sup>

*“Notification systems are commonly used in health and service industries to remind patients or clients of upcoming appointments or payment due dates. It is one example of a behavioral intervention strategy that can help to improve compliance and reduce waste of system resources. This approach has been similarly adapted for use in various justice system settings (e.g., with defendants to remind them*

<sup>32</sup> American Bar Association. (2007). *ABA Standards for Criminal Justice: Pretrial Release (3rd Ed.)*. Washington, D.C.: ABA. (See, [americanbar.org/groups/criminal\\_justice/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_pretrialrelease\\_toc/](http://americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_toc/)).

<sup>33</sup> National Association of Pretrial Services Agencies. (2004). *Standards on Pretrial Release (3rd Ed.)*. Washington, D.C.: NAPSA. (See, [napsa.org/eweb/DynamicPage.aspx?Site=NAPSA&WebCode=standards](http://napsa.org/eweb/DynamicPage.aspx?Site=NAPSA&WebCode=standards)).

<sup>34</sup> Elek, J., Sapia, S., & Keilitz, S. (2017). *Pretrial Justice Brief #10: Use of Court Date Reminder Notices to Improve Court Appearance Rates*. Williamsburg, VA: National Center for State Courts- Pretrial Justice Center for Courts. (See, [ncsc.org/Microsites/PJCC/Home/Pretrial-Justice-Briefs.aspx](http://ncsc.org/Microsites/PJCC/Home/Pretrial-Justice-Briefs.aspx)).

*of court appearance or payment due dates; with jurors to remind them of their upcoming jury service).*

*When used at the pretrial stage, notification systems may help to improve the court appearance rates of defendants, thereby reducing the community and court costs associated with missed hearings. When defendants fail to appear in court, arrest warrants must be issued and served, defendants may serve more jail time, docket sizes increase, workloads increase for justice system professionals, and an additional burden may be placed on victims and witnesses. Interventions that decrease failure-to-appear (FTA) rates may therefore provide a multi-layered budget-saving measure for courts. They may also help to improve perceptions of justice system fairness by avoiding the need to impose potentially harmful penalties (such as jail time) on defendants, who otherwise may have unintentionally missed their scheduled court date. The National Institute of Corrections cites court date notification as an effective pretrial supervision practice in, *A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency*.<sup>35</sup>*

**Outcome**

This recommendation was approved by the Commission on November 9, 2018. Senate Bill 2019-036 was introduced on January 4, 2019 and was signed by the Governor May 29, 2019. Although not initiated by CCJJ, the bill addresses the development of a court date reminder system. The system must be implemented by the State Court Administrator by July 1, 2020.

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<sup>35</sup> Pilnik, L. (2017). *A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency*. Washington, D.C.: National Institute of Corrections. (See, [nicic.gov/framework-pretrial-justice-essential-elements-effective-pretrial-system-and-agency](http://nicic.gov/framework-pretrial-justice-essential-elements-effective-pretrial-system-and-agency)).



# 5

## Next steps

### Task forces and committees

At the close of Fiscal Year 2019, the Mental Health/ Jails and the Abuse of Youth Subcommittee concluded their work. The Commission continued to support the ongoing work of the following task forces:

- Pretrial Release Task Force (Stan Hilkey, chair)
- Age of Delinquency (Jessica Jones and Joe Thome, co-chairs)

The Commission prepared to establish a new Drug Offense Task Force and an Opioid Investigation Subcommittee in response to a mandate by the Colorado General Assembly pursuant to Senate Bill 2019-008, *Concerning treatment of individuals with substance use disorders who come into contact with the criminal justice system.*

As this report goes to press, multiple recommendations are being prepared for presentation to the Commission by the Pretrial Release Task Force. Recommendations from the Age of Delinquency, the Drug Offense Task Forces and, the Opioid Investigations Subcommittee are expected in 2020.

### 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 [www.colorado.gov/ccjj](http://www.colorado.gov/ccjj). The Commission expects to present its next annual report in the fall of 2020.







# 6

## Appendices

### Appendices table of contents

67	Appendix A	Crime and court case processing overview
73	Appendix B	New study: Driving under the influence of drugs and alcohol in Colorado
79	Appendix C	Pretrial services and assessments tools
83	Appendix D	Money bond and pretrial release
87	Appendix E	The Commission's 2013 bond reform effort
91	Appendix F	Mental health/behavioral health update
95	Appendix G	Council of State Governments: Improving outcomes for youth
99	Appendix H	Trends and issues in criminal justice
105	Appendix I	Behavioral health efforts



# Appendix A: Crime and Court Case Processing Overview

## Crime & Justice Trends

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 COLORADO DEPARTMENT OF PUBLIC SAFETY

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Presentation to the Colorado Commission on Criminal and Juvenile Justice – September 14, 2018





## Crime & Justice Trends

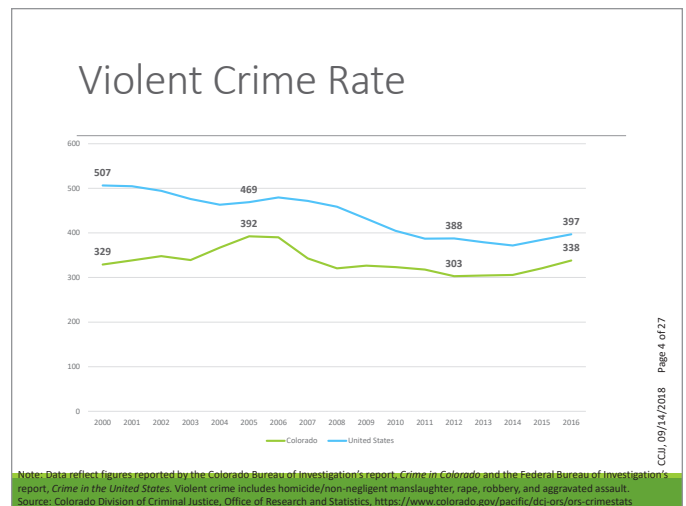
- ❖ Offense Rates
- ❖ Court Filings
- ❖ Competency Evaluations & Restorations
- ❖ Youth Corrections
- ❖ Adult Corrections

CCJJ, 09/14/2018

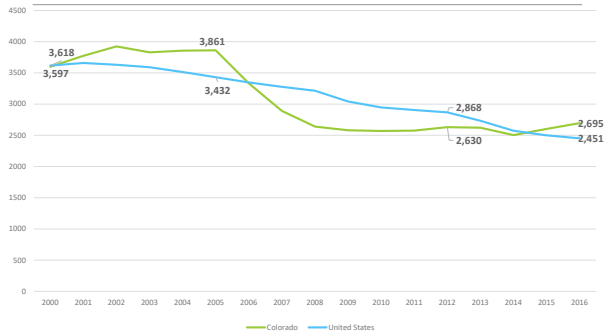
# Offense Rates

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CCJJ, 09/14/2018 Page 3 of 27



## Property Crime Rate



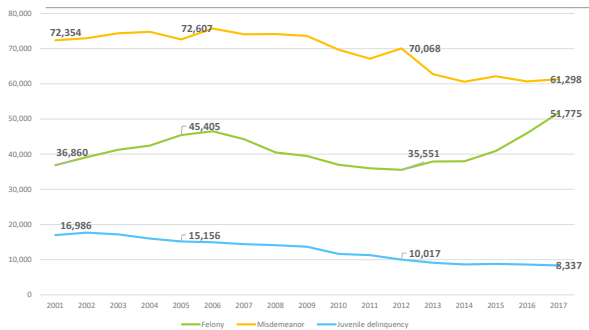
CCJJ, 09/14/2018 Page 5 of 27

Note: Data reflect figures reported by the Colorado Bureau of Investigation's report, *Crime in Colorado* and the Federal Bureau of Investigation's report, *Crime in the United States*. Property crime includes burglary, larceny-theft, and motor vehicle theft.  
Source: Colorado Division of Criminal Justice, Office of Research and Statistics, <https://www.colorado.gov/pacific/dcj-ors/ors-crimstats>

## Court Filings

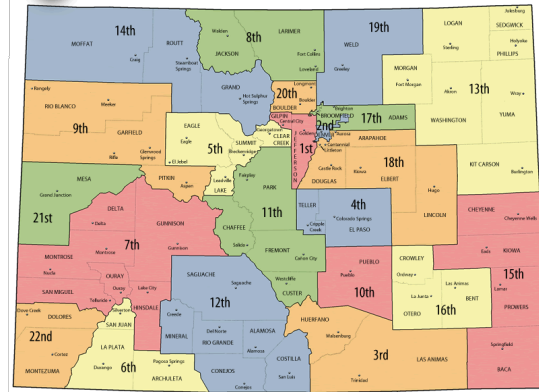
CCJJ, 09/14/2018 Page 6 of 27

## Court filings



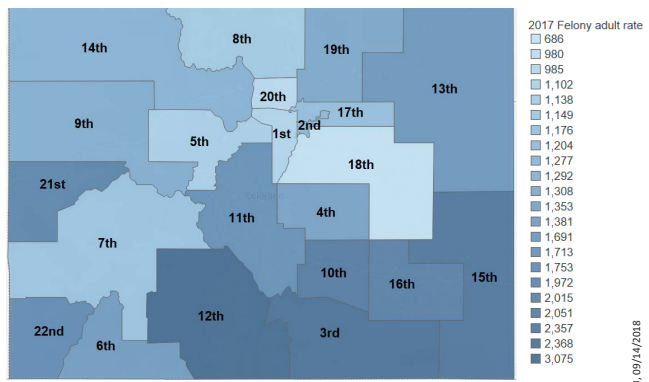
Note: Misdemeanor filings do not include Denver County Court.  
Source: Colorado Judicial Branch, *Annual Statistical Report, Fiscal Year 2008 (2008); Fiscal Year 2017 (2017)*, CCJJ, 09/14/2018

## COLORADO JUDICIAL DISTRICTS



Source: Colorado Judicial Branch, <https://www.courts.state.co.us/Courts/Map.cfm> CCJJ, 09/14/2018 Page 8 of 27

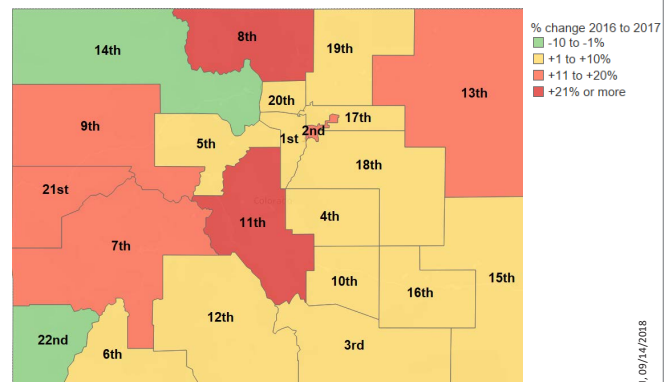
## Felony Filing Rate, 2017



CCJJ, 09/14/2018

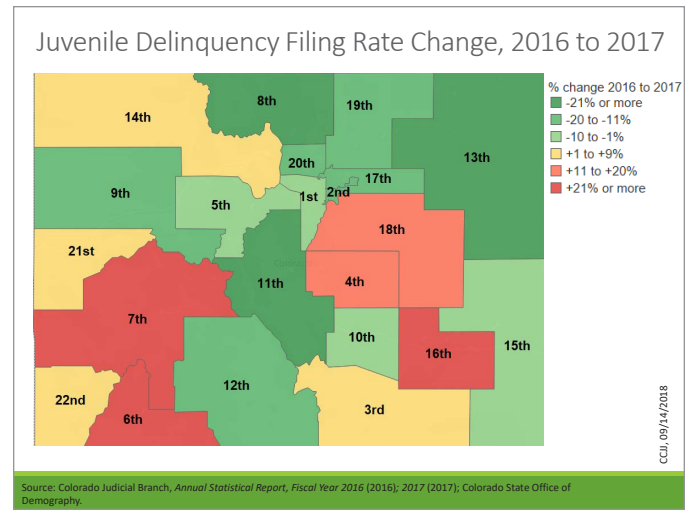
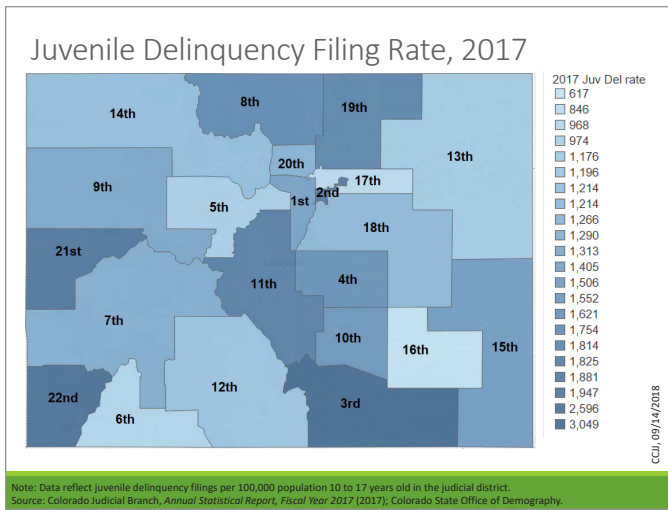
Note: Data reflect felony filings per 100,000 population 18 years or older in the judicial district.  
Source: Colorado Judicial Branch, *Annual Statistical Report, Fiscal Year 2017 (2017)*; Colorado State Office of Demography

## Felony Filing Rate Change, 2016 to 2017



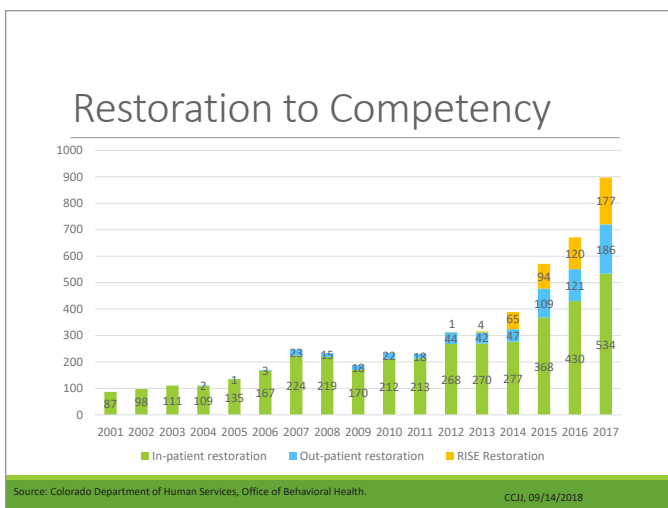
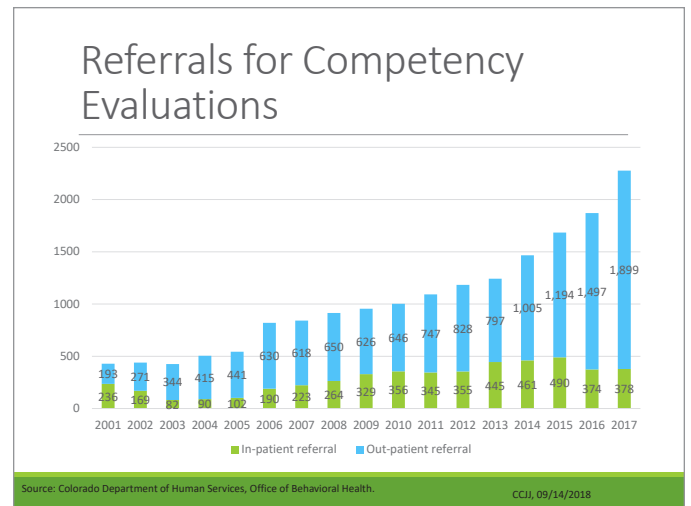
CCJJ, 09/14/2018

Source: Colorado Judicial Branch, *Annual Statistical Report, Fiscal Year 2016 (2016); 2017 (2017)*; Colorado State Office of Demography



# Competency Evaluations & Restorations

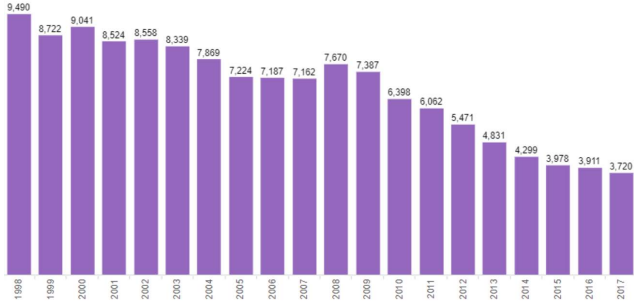
CCJJ, 09/14/2018 Page 13 of 27



# Youth Corrections

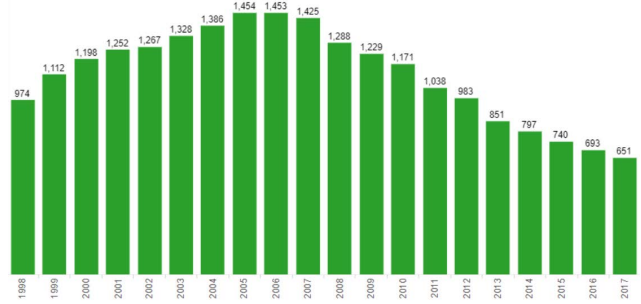
CCJJ, 09/14/2018 Page 16 of 27

## Juvenile Probation



Note: Data reflects annual census of probationers published in Colorado Judicial Branch, Annual Statistics Reports.  
Source: Colorado Division of Criminal Justice, Office of Research and Statistics,  
<https://www.colorado.gov/pacific/dcj-ors/ors-crimestats>  
CCJJ, 09/14/2018

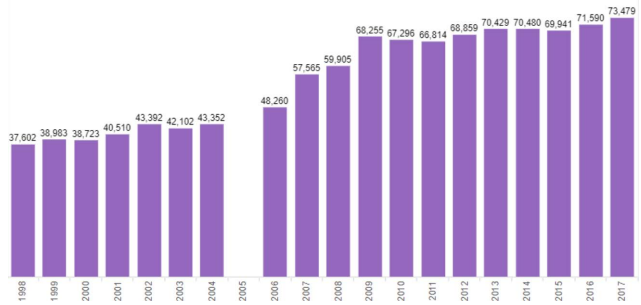
## Division of Youth Services



Note: Data reflects average daily population of committed residential youth in the Division of Youth Services, as of June 30.  
Source: Colorado Division of Criminal Justice, Office of Research and Statistics,  
<https://www.colorado.gov/pacific/dcj-ors/ors-crimestats>  
CCJJ, 09/14/2018

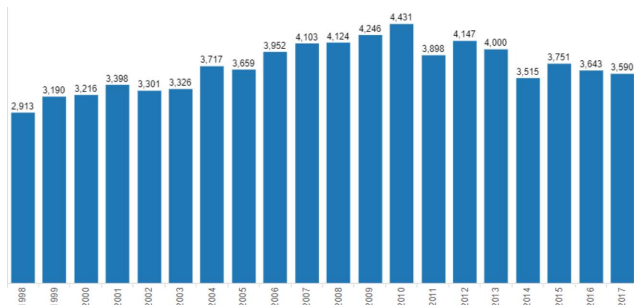
## Adult Corrections

## Adult Probation



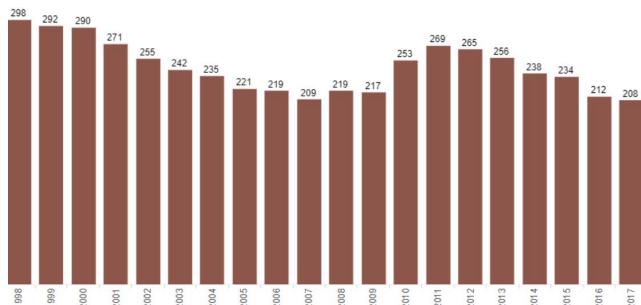
Note: Data reflects annual census of probationers published in Colorado Judicial Branch, Annual Statistics Reports.  
Source: Colorado Division of Criminal Justice, Office of Research and Statistics,  
<https://www.colorado.gov/pacific/dcj-ors/ors-crimestats>  
CCJJ, 09/14/2018

## Community Corrections



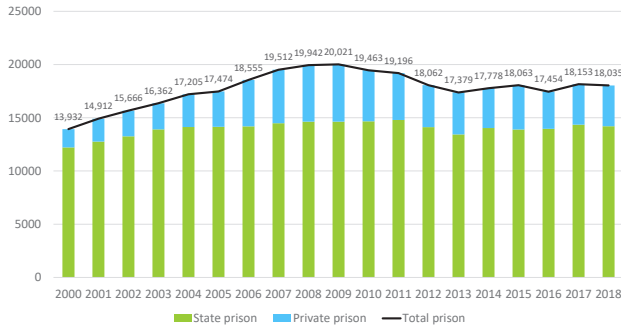
Note: Data reflects average daily population in community corrections facilities.  
Source: Colorado Division of Criminal Justice, Office of Research and Statistics,  
<https://www.colorado.gov/pacific/dcj-ors/ors-crimestats>  
CCJJ, 09/14/2018

## Youthful Offender System



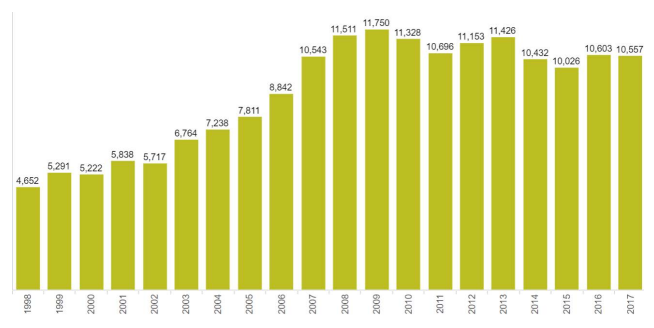
Note: Data reflect YOS population reported in monthly population reports on June 30 of the fiscal year.  
Source: Colorado Division of Criminal Justice, Office of Research and Statistics,  
<https://www.colorado.gov/pacific/dcj-ors/ors-crimestats>  
CCJJ, 09/14/2018

### Custody Prison Population



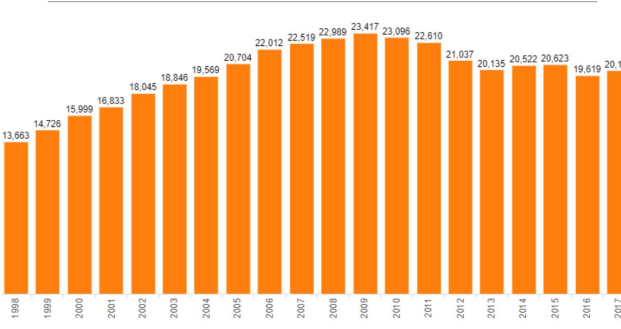
Note: Data reflects prisoners held in DOC prison facilities on June 30 of that fiscal year.  
Source: Colorado Department of Corrections, *Monthly Population and Capacity Report, June 2014; June 2018*. CCJJ, 09/14/2018

### Adult Parole Population



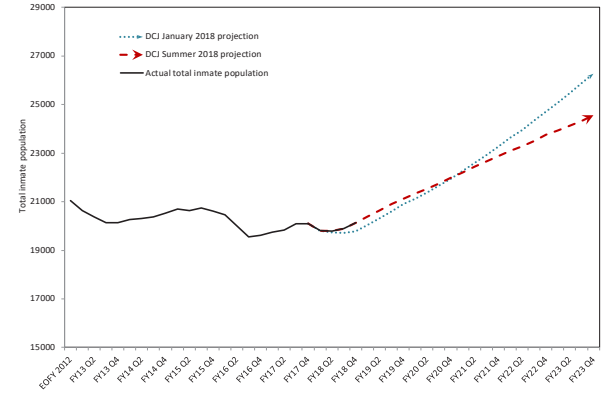
Note: Data reflect DOC monthly population reports on June 30 of the fiscal year.  
Source: Colorado Division of Criminal Justice, Office of Research and Statistics, <https://www.colorado.gov/pacific/dcj-ors/ors-crimstats>. CCJJ, 09/14/2018

### Total DOC Population



Note: Data reflect DOC monthly population reports on June 30 of the fiscal year.  
Source: Colorado Division of Criminal Justice, Office of Research and Statistics, <https://www.colorado.gov/pacific/dcj-ors/ors-crimstats>. CCJJ, 09/14/2018

### DOC Total Inmate Population Projection



Source: Colorado Division of Criminal Justice, *Summer 2018 Interim Prison Population and Parole Caseload Projections*. CCJJ, 09/14/2018



### Contact Information

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# Appendix B: New Study: Driving Under the Influence of Drugs and Alcohol in Colorado

## Impaired Driving in Colorado: First Results from a Data Integration Initiative

BECKY BUI  
 COLORADO DEPARTMENT OF PUBLIC SAFETY  
 DIVISION OF CRIMINAL JUSTICE  
 OFFICE OF RESEARCH & STATISTICS  
 SEPTEMBER 2018



## National Landscape of Marijuana Laws

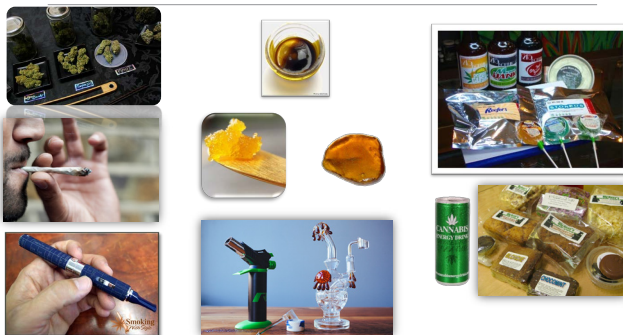


Medical & Recreational: 9 States & DC --- Medical only: 22 States --- CBD only: 15 States --- None: 4 States

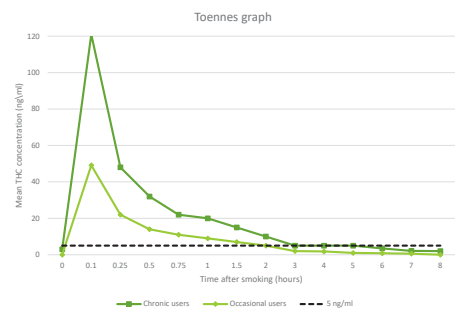
Source: National Conference of State Legislatures (2018), <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>  
 Note: Not all states' laws are currently in effect.



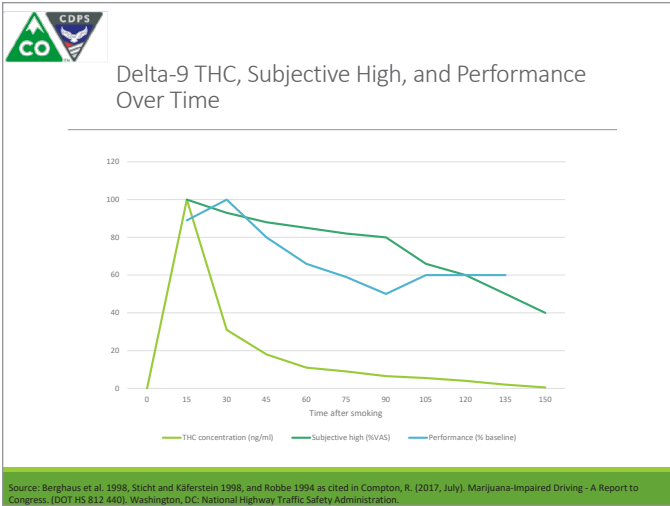
## Varieties of Cannabis and Ingestion



## Delta-9 THC Over Time

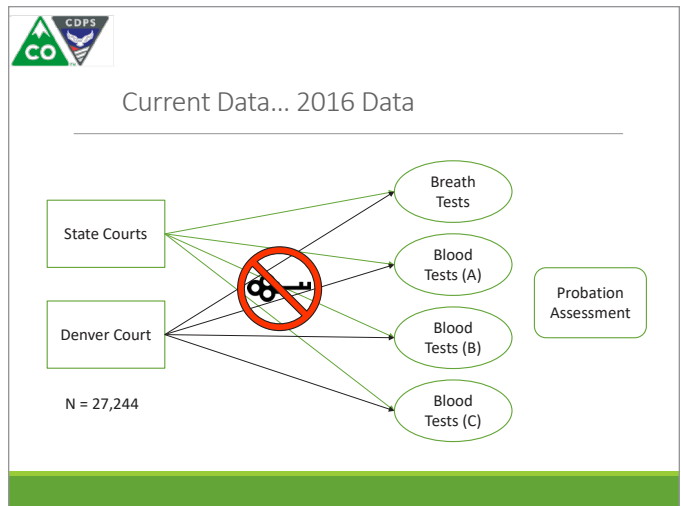
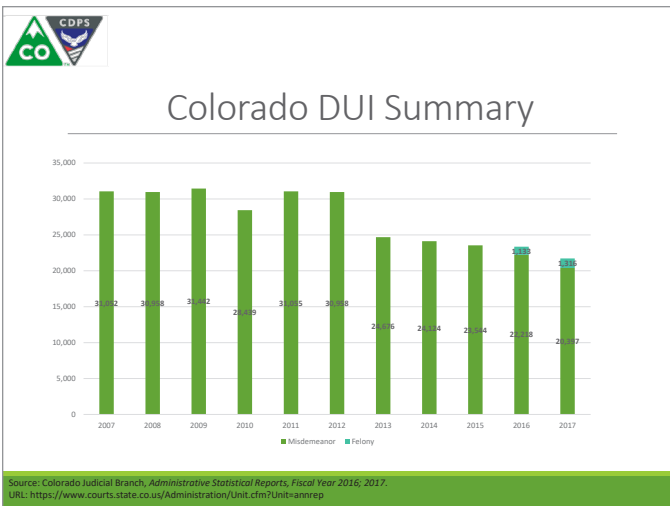
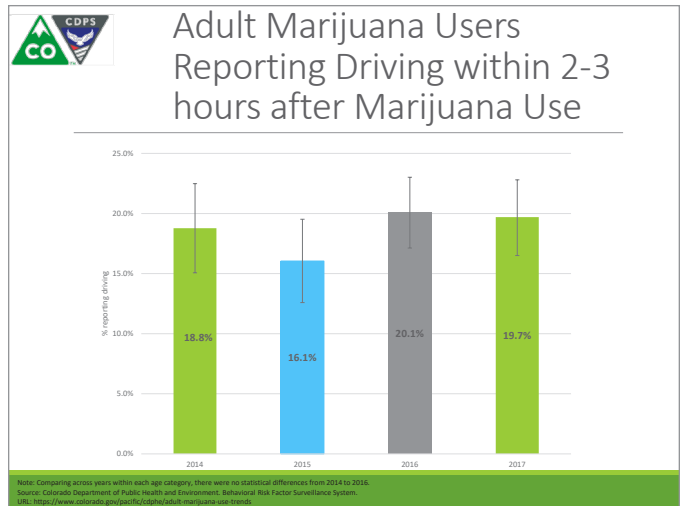
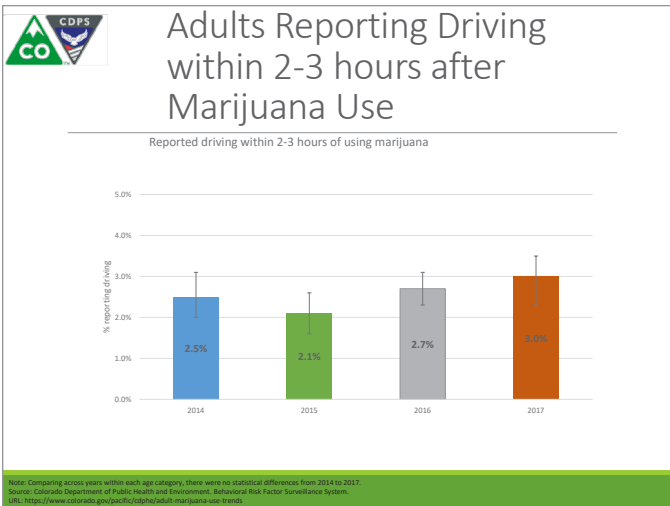


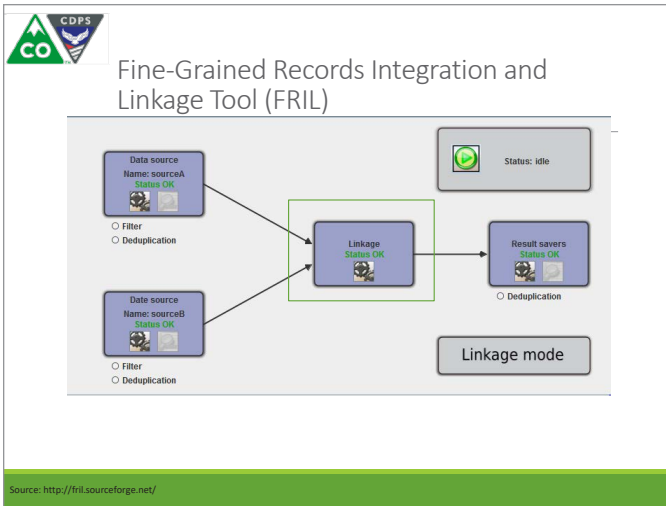
Source: Adapted from Toennes, S., Ramaekers, J., Theunissen, E., Moeller, M., & Kauert, G. (2008). Comparison of cannabinoid pharmacokinetic properties in occasional and heavy users smoking a marijuana or placebo joint. *Journal of Analytical Toxicology*, 32, 470-477.



### Previous Drug Impaired Driving Data in Colorado

- Behavioral Risk Factor Surveillance System
- Fatality Analysis Reporting System
- Study completed by private lab, ChemaTox
- Total DUI case filing counts
- Total DUI arrests





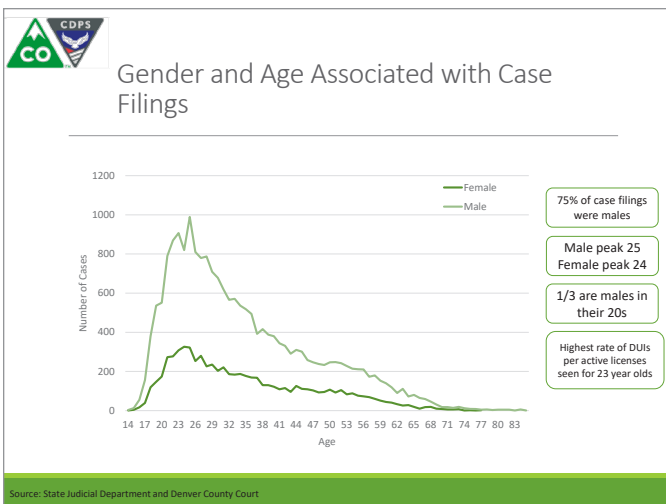
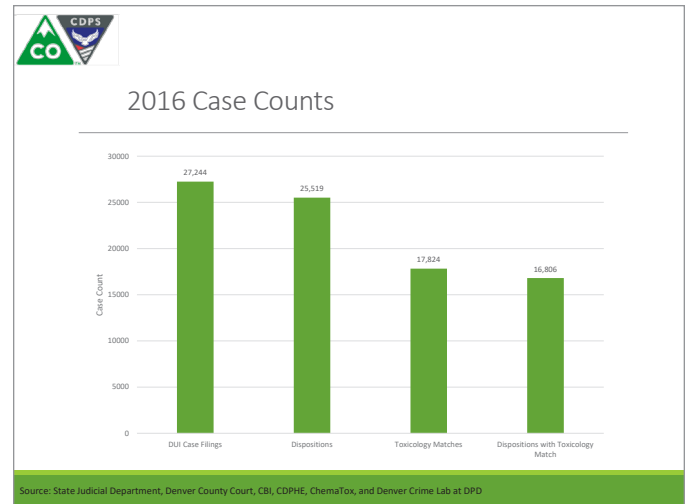
### Fine-Grained Records Integration and Linkage Tool (FRIL)

Source: <http://fril.sourceforge.net/>

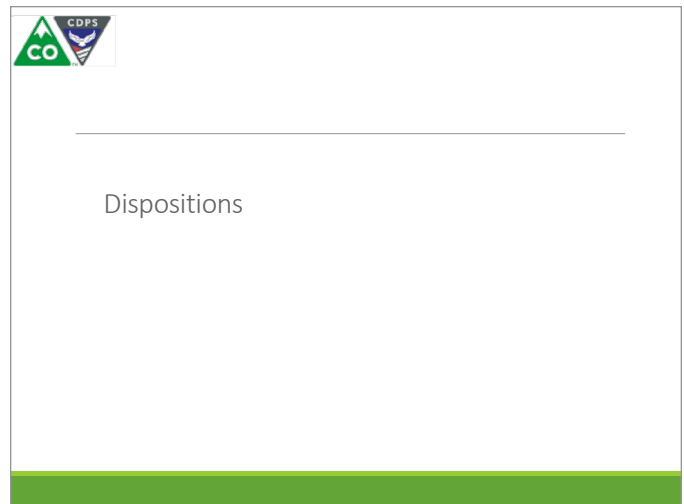
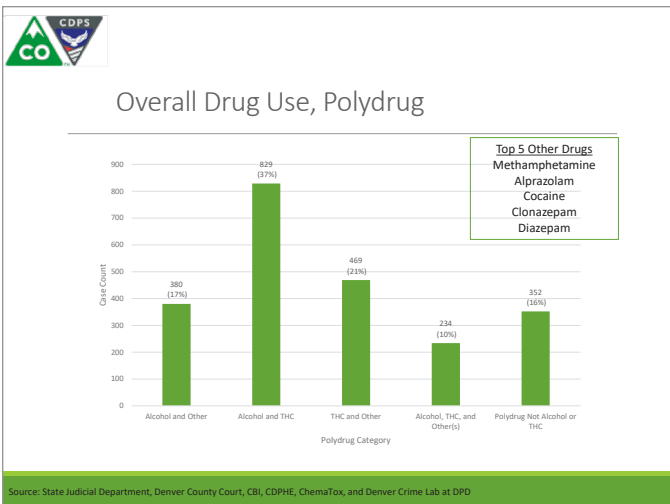
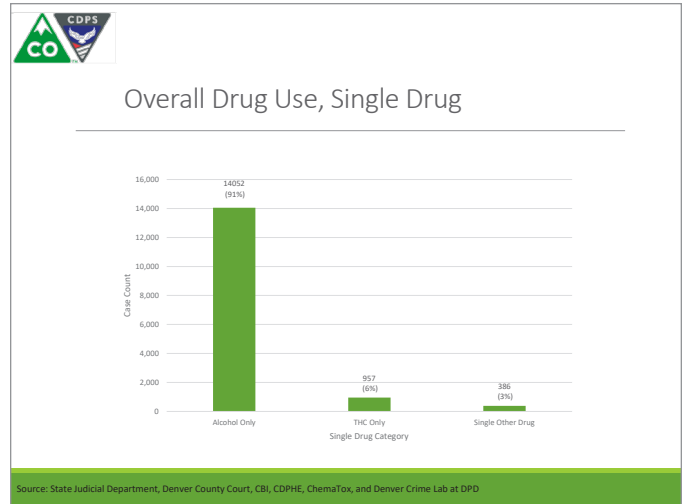
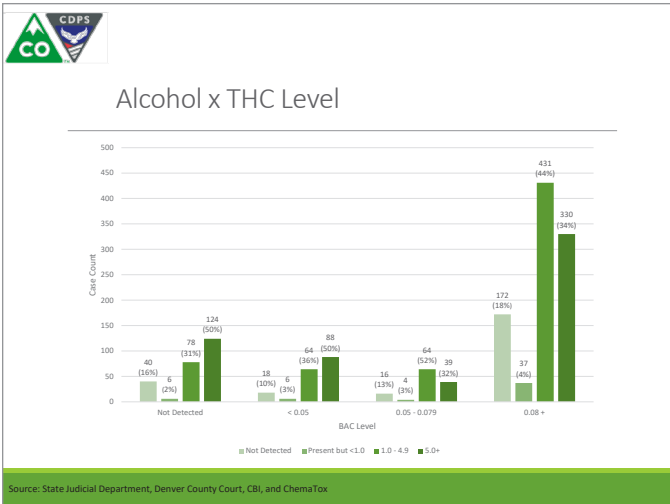
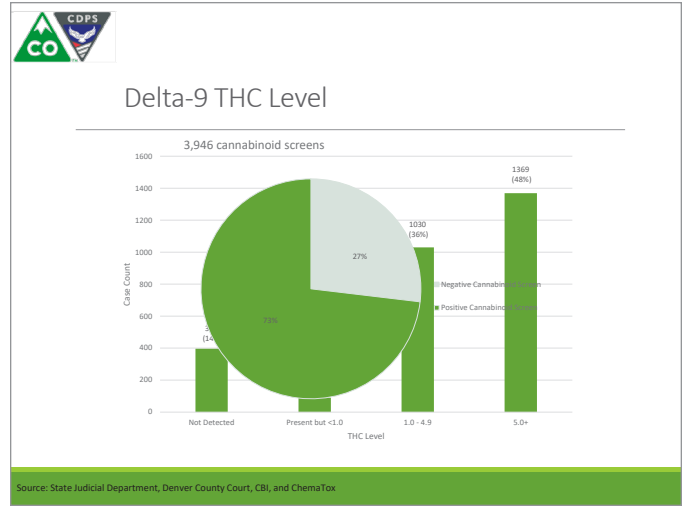
### Fine-Grained Records Integration and Linkage Tool (FRIL)

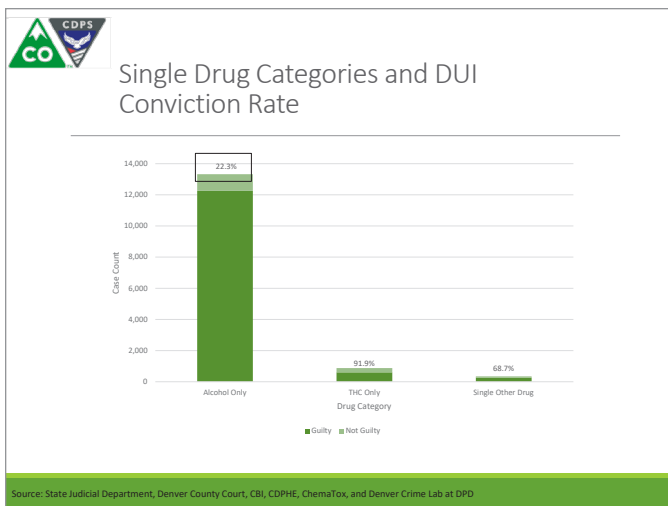
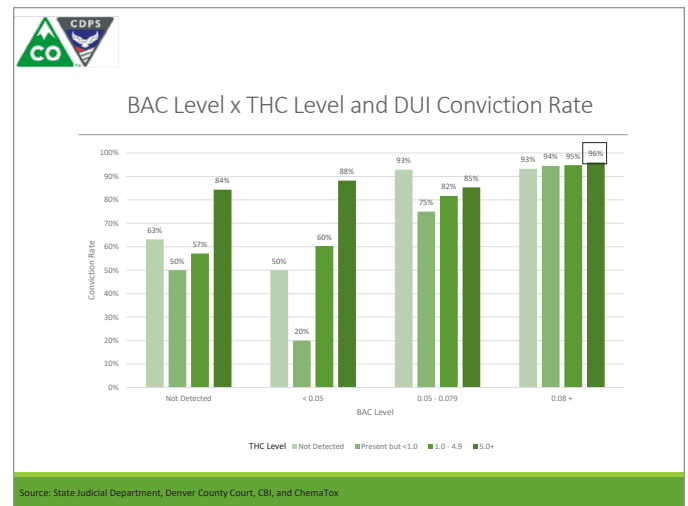
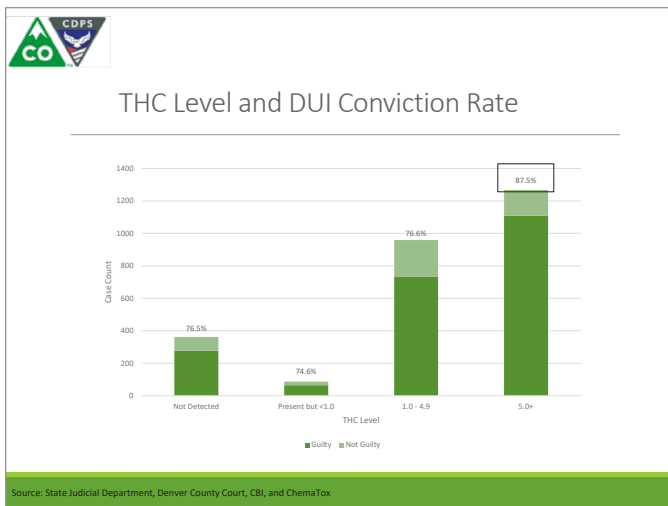
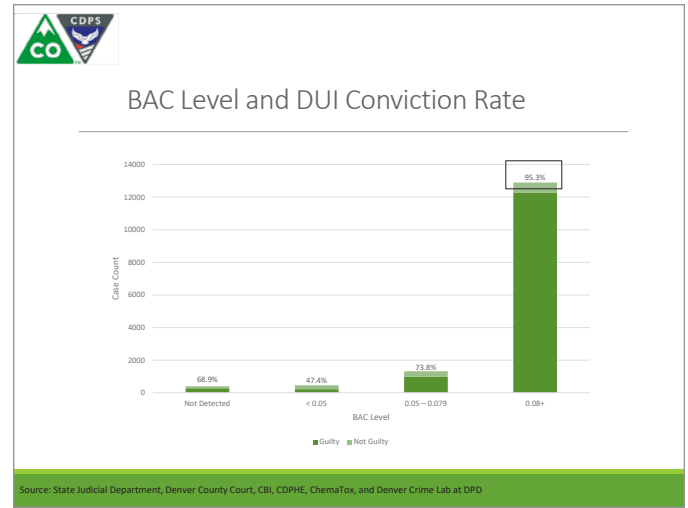
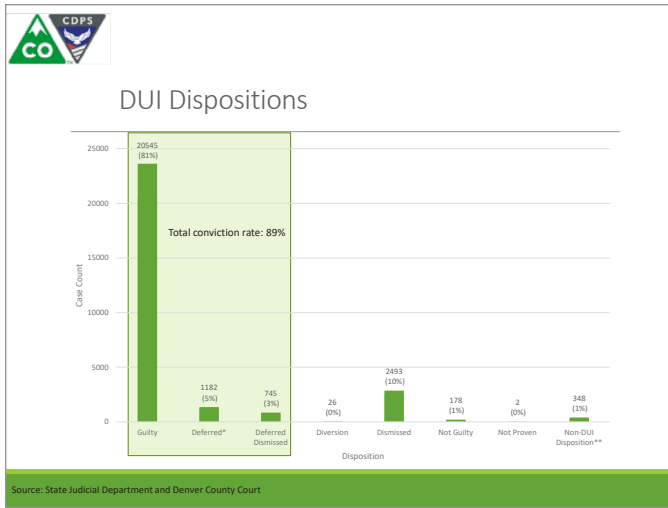
Decision	Confidence	FirstName@sourceA	LastName@sourceA	ArrestingAgency@sou	DOB@sourceA	dob	OffenseDate@source	OffenseDate@source
1	70							
2	67							
3	71							
4	70							
5	68							
6	67							
7	71							
8	65							
9	69							
10	73							
11	67							
12	68							
13	68							

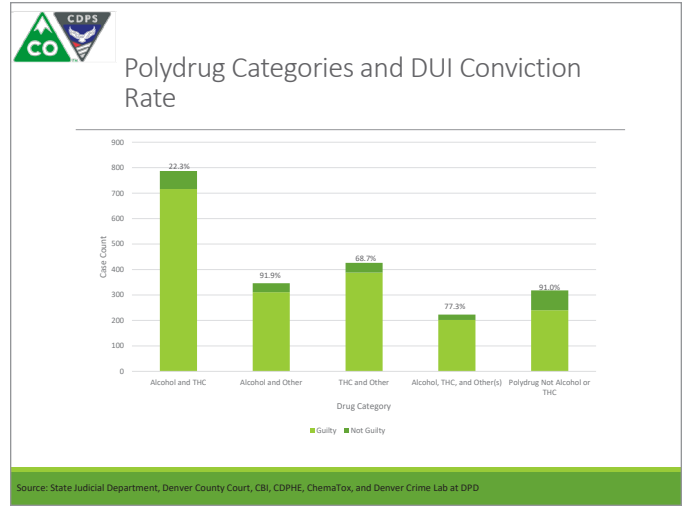
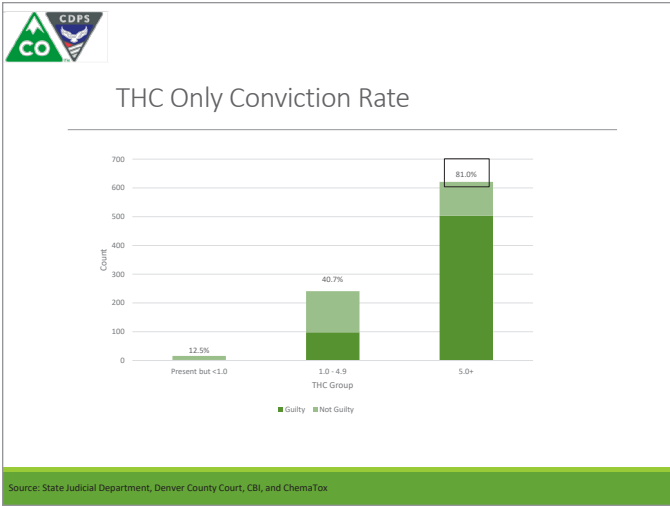
Source: <http://fril.sourceforge.net/>



### Toxicology



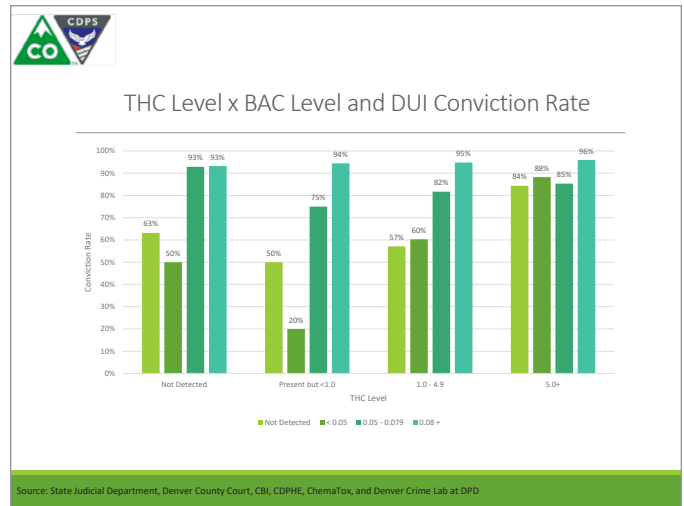




**Contact Information**

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 Colorado Division of Criminal Justice  
 700 Kipling St., Suite 1000  
 Lakewood, CO 80215

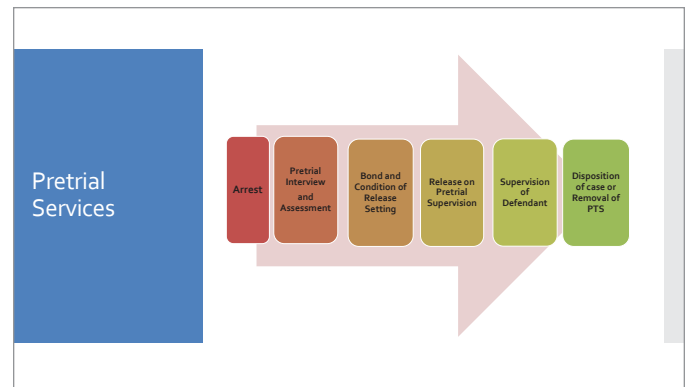
becky.bui@state.co.us  
 303-239-4496



## Appendix C: Pretrial Services and Assessments Tools

**Presentation to the Colorado Commission on Criminal and Juvenile Justice**  
**October 12, 2018**

An overview of Pretrial Services Programs/Pretrial Risk Assessment in Colorado



**National Pretrial Reform**

In 2011, [U.S. Attorney General Eric Holder](#) called for the expansion of pretrial reform across the US.

Several national organizations have called for the advancement of pretrial system improvements

- American Bar Association
- National Association of Counties
- American Council of Chief Defenders
- Association of Prosecuting Attorney's
- American Jail Association
- American Probation and Parole Association
- National Sheriff's Association
- Conference of State Court Administrators
- Conference of Chief Justices (2013)
- International Association of Chiefs of Police

**Colorado's bail statute calls for the development of pretrial programs**

- 16-4-106
- (2) THE CHIEF JUDGE OF ANY JUDICIAL DISTRICT SHALL ENDEAVOR TO CONSULT, ON AN ANNUAL BASIS, WITH THE COUNTY OR COUNTIES WITHIN THE JUDICIAL DISTRICT IN AN EFFORT TO SUPPORT AND ENCOURAGE THE DEVELOPMENT BY THE COUNTY OR COUNTIES, TO THE EXTENT PRACTICABLE AND WITHIN AVAILABLE RESOURCES, OF PRETRIAL SERVICES PROGRAMS THAT SUPPORT THE WORK OF THE COURT AND EVIDENCE-BASED DECISION-MAKING IN DETERMINING THE TYPE OF BOND AND CONDITIONS OF RELEASE.

**Pretrial programs may be involved with the following duties**

- Conducting interviews with defendants, as well as with other individuals affiliated with them, to find out information on the defendant's family life, education, employment, mental and physical health, substance use, financial status and other important information.
- Performing criminal background checks and review relevant records, such as employment, court, education, financial and military records.
- Preparing reports for court officials outlining recommendations for the type of bond and conditions of release
- Communicating with attorneys, law enforcement officers, courtroom personnel and other professionals.
- Supervising defendants released through in person meetings and phone conversations, drug/alcohol testing, and electronic monitoring.
- Providing reminders of court dates for defendants
- Helping the released defendants access physical or mental health, substance abuse, employment and other services they may require.

**Pretrial programs exist in <25% of Colorado Counties.**

Existing programs are generally located in the more populated counties.

- Adams
- Alamosa
- Arapahoe
- Boulder
- Broomfield
- Douglas
- Denver
- El Paso
- Jefferson
- Larimer
- Garfield
- Mesa
- Montezuma
- Pueblo
- Weld

\*\* There are additional counties in Colorado are providing elements of pretrial services through other criminal justice entities in the jurisdiction, but do not have stand alone programs.



Pretrial programs in Colorado vary in size and scope

- organizational structure
- number of staff/ budget
- services available
- span of services ( who is assessed/supervised)
- availability ( hours of operation)

## Pretrial Risk Assessment

What is an empirically-derived pretrial risk assessment tool?

- 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 their likelihood of having a successful pretrial release—that is, they make all their **court appearances** and are not **arrested on new charges**.

Why is it important to know a defendant's risk level?

A defendant's risk level should be used to guide two decisions:

- 1) the decision to release or detain pretrial
- 2) if released, the assignment of appropriate release conditions, such as pretrial supervision.

Recent research has shed new light on the importance of a accurately assessing risks in making these decisions

- 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
- 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

What factors do these tools use?

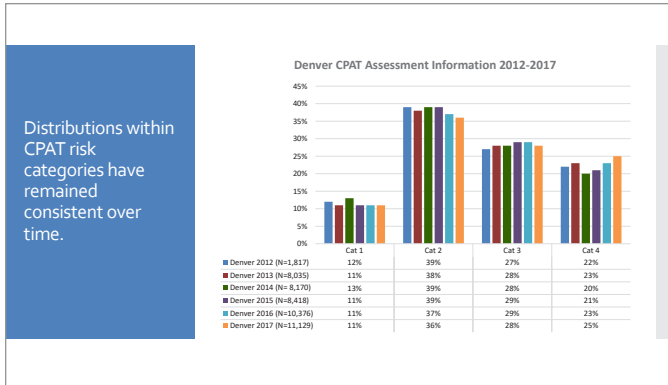
- Current charge/Pending charges
- Previous convictions
- Previous FTA
- Violent conviction
- Residency
- Employment/student status
- Current/history of drug or alcohol abuse
- Working phone
- Age (current or at first arrest)
- Active warrant
- Mental health
- On probation/parole
- Previously incarcerated

The Colorado Pretrial Assessment Tool (CPAT)

- First empirically-derived pretrial risk assessment tool in Colorado
- Developed using data from defendants in Denver and nine other CO counties
- 12-item instrument
- The items are the most accurate predictors of pretrial misconduct in CO
- Items are scored based on information obtained from:
  - Interview with the defendant
  - Databases (CO Judicial Branch; NCIC/CCIC)
- Total score ranges from 0 (lower risk) to 82 (higher risk)

CPAT Items and Scoring

Item	Range
1. Having a Home or Cell Phone	0 to 5 points
2. Owning or Renting One's Residence	0 to 4 points
3. Contributing to Residential Payments	0 to 9 points
4. Past or Current Problems with Alcohol	0 to 4 points
5. Past or Current Mental Health Treatment	0 to 4 points
6. Age at First Arrest	0 to 15 points
7. Past Jail Sentence	0 to 4 points
8. Past Prison Sentence	0 to 10 points
9. Having Active Warrants	0 to 5 points
10. Having Other Pending Cases	0 to 13 points
11. Currently on Supervision	0 to 5 points
12. History of Revoked Bond or Supervision	0 to 4 points
<b>Total Range</b>	<b>0 to 82 points</b>



CPAT Validation Project

- Collaboration between the University of Northern Colorado and seven (7) Pretrial Services programs in Colorado – Boulder, Denver, Garfield, Larimer, Mesa, Pueblo and Weld

Are there other Pretrial risk assessment tools?

- Yes, ....Examples:
  - Arapahoe/Douglas Counties locally developed tool
  - Virginia Pretrial Risk Assessment Tool
  - Alaska, Ohio
  - Federal System
  - Public Safety Assessment Tool (PSA)

Highlights of Denver's Pretrial Program

Denver implemented actuarial risk assessment and the use of a risk informed pretrial supervision model in 2012.

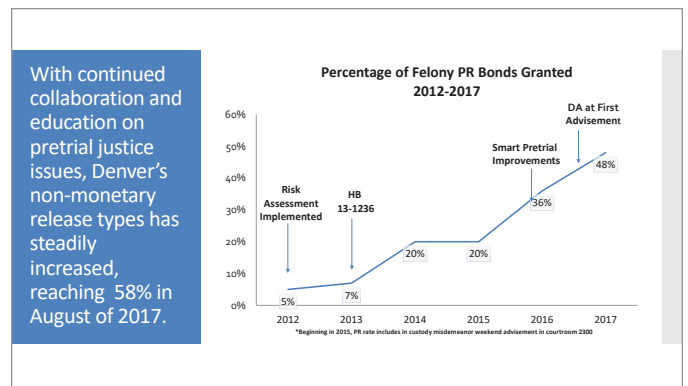
**2012**  
Colorado Pretrial Assessment Tool (CPAT) Implemented

Ontario Domestic Abuse Risk Assessment (ODARA) Implemented

Risk Informed Supervision Matrix Established

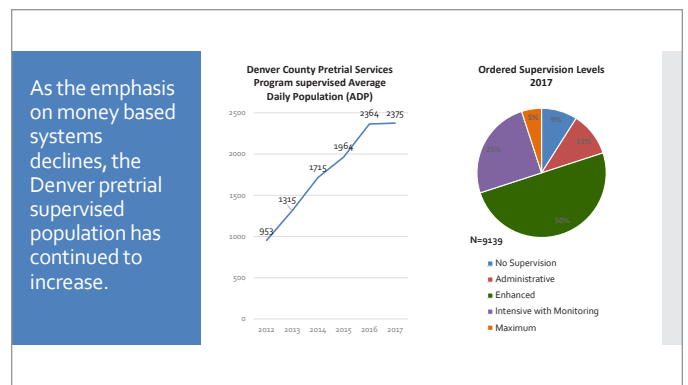
**2013**  
Revised Colorado Bail Statute

**2014-2017**  
Denver Smart Pretrial Demonstration Initiative

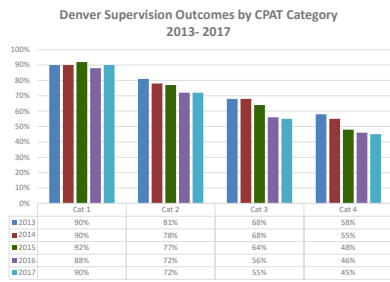


Denver Pretrial Services Investigation Unit completes a bond report on all assessed defendants, which includes a recommendation regarding pretrial supervision. The decision matrix was updated in 2016 and is part of the current Pretrial Judicial Order.

Primary Charge and CPAT Category	••••• VEA Misdemeanor	••••• VEA Felony	••••• VEA Misdemeanor DV	••••• VEA Felony DV	••••• VEA Felony DV	••••• VEA Felony DV
<b>Category 1</b> Level 1 (0-180 days)	Green	Green	Green	Green	Green	Green
<b>Category 2</b> Level 2 (181-360 days)	Green	Green	Green	Green	Green	Green
<b>Category 3</b> Level 3 (361-540 days)	Green	Green	Green	Green	Green	Green
<b>Category 4</b> Level 4 (541-720 days)	Green	Green	Green	Green	Green	Green
<b>Category 5</b> Level 5 (721-900 days)	Green	Green	Green	Green	Green	Green



Denver Pretrial supervision program success rates continue to correlate to pretrial CPAT risk scores



Thank you.

• Questions?

• Greg Mauro, [greg.mauro@denvergov.org](mailto:greg.mauro@denvergov.org)

## Appendix D: Money Bond and Pretrial Release

### Money Bond and Pretrial Release: The National Landscape, Legal Analysis, and Supreme Court Cases

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Chief Deputy District Attorney  
21<sup>st</sup> Judicial District, Mesa County  
Mesa County Justice Center  
125 N Spruce Street, 2nd Floor  
DA Office: 970-244-1730  
Email: Bo.Zeerip (at) mesacounty.us

Presentation to the Colorado Commission on Criminal and Juvenile Justice  
November 9, 2018

### Purposes of bail and pretrial decision making:

- ▶ 1) Maximize Release
  - ▶ Presumption of Innocence = presumption of release
  - ▶ If a defendant can be safely managed in the community during the pretrial period, they should be released.
- ▶ 2) Maximize Public Safety
  - ▶ Safety of victims and witnesses
  - ▶ Community safety
- ▶ 3) Maximize Court Appearance
  - ▶ Avoid prosecution } 5% estimated
  - ▶ Flight risk
  - ▶ Failures to Appear...due to irresponsibility/inattention } 95% estimated
- ▶ 4) Maintain the Integrity of the Judicial System
  - ▶ Intimidation / bribery / tampering / retaliating

❖ Factors related to sentencing, but NOT pretrial decisions:  
Punishment and, to an extent, rehabilitation

CO Commission on Criminal and Juvenile Justice, 11/9/2018 Money Bond & Pretrial Release 2 of 20

### Overview of the Pretrial Landscape

- ▶ 1) The current pretrial / bail system in Colorado and beyond
  - ▶ Money Bond and Pretrial Release
- ▶ 2) The other option - a hold / release system - pretrial detention
  - ▶ The National Landscape
- ▶ 3) What is legally required for a hold / release system?
  - ▶ Supreme Court Case U.S. v. Salerno

CO Commission on Criminal and Juvenile Justice, 11/9/2018 Money Bond & Pretrial Release 3 of 20

### Overview of the Pretrial Landscape

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CO Commission on Criminal and Juvenile Justice, 11/9/2018 Money Bond & Pretrial Release 4 of 20

## Overview of the Pretrial Landscape

1. The current pretrial / bail system in Colorado

### Some Pretrial Statistics:

- ▶ Approximately 63% of the people in local jails are pretrial.
  - ▶ Do we have the RIGHT people in jail?
- ▶ Jail costs? \$50 - \$100+ per day (nationally \$38 million/day)
- ▶ Pretrial Services costs approx. \$5 - \$20 per day.
- ▶ In a large majority of criminal cases, Judges impose a surety bond condition, and then it is left to a defendant's financial means and a bail bondsman to decide whether the defendant remains in jail.
- ▶ In Mesa County - pre-reform - approx. 70% of defendants received a surety bond per a bond schedule based on charge - not based on risk or any consideration of the individual defendant's circumstances.
- ▶ 34% of felony defendants in Colorado never post their \$\$\$ bond.
- ▶ 18% of misdemeanor defendants never post their \$\$\$ bond.
- ▶ Mesa County - approx. 10% do not post \$\$\$ bond.

## Overview of the Pretrial Landscape

1. The current pretrial / bail system in Colorado

- ▶ “The effect of such a system (our current bail system) is that the professional bondsmen hold the keys to the jail in their pockets. They determine for whom they will act as surety - who, in their judgment, is a good risk. The bad risks, in the bondsmen's judgment, and the ones who are unable to pay the bondsmen's fees, remain in jail. The Court and the (Bond) Commissioner are relegated to the relatively unimportant chore of fixing the amount of bail.”

Pannell v. U.S., 320 F.2d 698, 699 (D.C. Cir. 1963).

## Overview of the Pretrial Landscape

1. The current pretrial / bail system in Colorado

### Commercial Sureties - aka, Bail Bondsman

- ▶ “We have always done it this way.” “Everybody does it.”
- ▶ When did they first appear? Have they been around forever?
- ▶ “By 1898, the firm of McDonough Brothers, established as a saloon, found its business niche by underwriting bonds for defendants who faced charges in the nearby Hall of Justice...”
- ▶ The U.S. and the Philippines are the only two countries in the world that use commercial bail bondsmen.
- ▶ In England, and other countries, it is a crime to do what U.S. bail bondsmen do.

## Overview of the Pretrial Landscape

1. The current pretrial / bail system in Colorado

### Commercial Sureties - aka, Bail Bondsman (continued)

- ▶ The ABA has advocated for the elimination of bondsmen since 1968.
  - ▶ “Their role (bondsmen) is neither appropriate nor necessary and the recommendation that they be abolished is without qualification.”
- ▶ Jurisdictions that have eliminated the use of bail bondsmen - or made them virtually unused and/or irrelevant:
  - ▶ Most of the world - except a majority of U.S. states and Philippines.
  - ▶ U.S. Federal system - since 1984.
  - ▶ Washington, D.C. - for the past approx. 30+ years.
  - ▶ Illinois - 1963 - the 10% plan
  - ▶ Kentucky, Oregon, and Wisconsin (all have statutes disallowing bail bondsmen).
  - ▶ Maine, and Nebraska rarely use them (add NJ after 2017).
  - ▶ New Jersey - (in 2017 judges imposed surety bonds on only 44 cases).
  - ▶ California - will eliminate money bail and bondsmen on October 1, 2019

## Overview of the Pretrial Landscape

1. The current pretrial / bail system in Colorado

### Monetary Conditions of Bond / Release

- ▶ Does requiring a monetary condition of bond increase / maximize release?
  - ▶ In Colorado 18% of misd. and 34% felony defendants never post the \$\$\$ bond.
  - ▶ Washington, D.C. they have a 94% initial release rate.
  - ▶ In 2017 New Jersey had a 94% initial release rate.
  - ▶ In Mesa Co. we release approx. 80% of defendants on summons or PR bonds.
- ▶ Does posting a monetary condition of bond increase / maximize public safety?
  - ▶ Defendants / bondsmen do not lose any \$\$\$ for new criminal activity.
  - ▶ No evidence or research indicates posting a monetary condition of bond helps public safety.
- ▶ Does posting a monetary condition of bond increase / maximize court appearance?
  - ▶ Majority of evidence suggests no positive impact from posting a monetary condition of bond.
  - ▶ Colorado - 88% for PR bonds vs. 81% for \$\$\$ bonds
  - ▶ Mesa Co. - 89% for PR bonds vs. 87% for \$\$\$ bonds
  - ▶ Washington, D.C. has a court appearance rate of 90%

## Overview of the Pretrial Landscape

- ▶ 1) The current pretrial / bail system in Colorado and beyond
  - ▶ Money Bond and Pretrial Release
- ▶ 2) The other option - a hold / release system - pretrial detention
  - ▶ The National Landscape
- ▶ 3) What is legally required for a hold / release system?
  - ▶ Supreme Court Case U.S. v. Salerno

## Overview of the Pretrial Landscape

2. The other option - a hold/release system - pretrial detention

### Release/Detention (in or out) Systems

- ▶ The question is simply whether the defendant should be in or out.
- ▶ Judges decide whether a person is detained or released - not a person's financial means or a bail bondsman.
- ▶ Who will be eligible for pretrial detention?
- ▶ How will we decide?
- ▶ Two main limiting mechanisms - "net" and "process"
- ▶ Initial net / process - limited and based on a prediction of what a defendant might do or not do.
- ▶ Secondary net / process - broader and based actual pretrial behavior

CO Commission on Criminal and Juvenile Justice, 11/9/2018

Money Bond & Pretrial Release

11 of 20

## Overview of the Pretrial Landscape

2. The other option - a hold/release system - pretrial detention

### Who currently uses a release/detain system?

- ▶ U.S. Federal System - since 1984
  - ▶ 86% of cases are felony cases (vs. an 80/20 state court ratio)
- ▶ Washington, D.C. for 30+ years
  - ▶ No constitutional provisions / extensive pretrial services program
- ▶ New Jersey since 2017
  - ▶ Probably the best jurisdiction to consider re: outcomes
- ▶ New Mexico since 2017 (for felony offenses only, and only for public safety)
  - ▶ Because of limitations, probably not the best model
- ▶ California - beginning in October 2019
  - ▶ Completely eliminates \$\$\$ and bail bondsman

CO Commission on Criminal and Juvenile Justice, 11/9/2018

Money Bond & Pretrial Release

12 of 20

## Overview of the Pretrial Landscape

2. The other option - a hold/release system - pretrial detention

### Colorado's current "hold w/o bail" provisions

- ▶ Colorado's constitution currently only allows for detention for:
  - ▶ 1) "Capital crimes" when the "proof is evident or the presumption is great"
  - ▶ 2) Certain very narrow categories of crimes w/ a hearing within 96 hours

CO Commission on Criminal and Juvenile Justice, 11/9/2018

Money Bond & Pretrial Release

13 of 20

## Overview of the Pretrial Landscape

2. The other option - a hold/release system - pretrial detention

### Examples: Release/detain system - Washington, D.C.

- ▶ Has an initial "charge-based net" (the who)
- ▶ A detention hearing process with similar components as *Salerno* case. (the how)
- ▶ ". . . Clear and convincing evidence that no condition or combination of conditions will reasonably assure the appearance of the person as required, and the safety of any other person and the community."
- ▶ Initial (after detention hearings) release / detention rate of 94% / 6%.
- ▶ 88% of defendants remain released w/o \$\$\$ during the pretrial period.
- ▶ Pretrial law abiding rate of 91%.
- ▶ Court appearance rate of 90% (defendants who have a perfect court appearance rate).

CO Commission on Criminal and Juvenile Justice, 11/9/2018

Money Bond & Pretrial Release

14 of 20

## Overview of the Pretrial Landscape

2. The other option - a hold/release system - pretrial detention

### Examples: Release/detain system - New Jersey

- ▶ Passed legislature unanimously. Public voted 66% to pass constitutional amendment.
- ▶ Implementation of constitutional amendment and new statutes was on January 1, 2017.
- ▶ Very broad initial charge-based detention net, and similar process.
- ▶ ". . . Clear and convincing evidence that no amount of monetary bail, non-monetary conditions of pretrial release or combination of monetary bail and conditions would reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process.
- ▶ Judges in New Jersey had 142,663 cases in 2017 - bonds were set in 44,319 cases.
- ▶ Prosecutors asked for detention in 19,366 cases - 44%.
- ▶ Judges actually detained 8,043 defendants - 42% of the cases where prosecution asked.
- ▶ 94% release rate / 6% detention rate
- ▶ Only 44 defendants received a monetary condition of bond.
- ▶ Experienced a reduction in jail population of 20% in one year, and 35% over 3 years.

CO Commission on Criminal and Juvenile Justice, 11/9/2018

Money Bond & Pretrial Release

15 of 20

## Overview of the Pretrial Landscape

- ▶ 1) The current pretrial / bail system in Colorado +
  - ▶ Money Bond and Pretrial Release
- ▶ 2) The other option - a hold / release system - pretrial detention.
  - ▶ The National Landscape
- ▶ 3) What is legally required for a hold / release system?
  - ▶ Supreme Court Case U.S. v. Salerno

CO Commission on Criminal and Juvenile Justice, 11/9/2018

Money Bond & Pretrial Release

16 of 20

## Overview of the Pretrial Landscape

3. Legal requirements for a hold/release system

### U.S. v. Salerno, 481 U.S. 739 (1987)

- ▶ The United States Supreme Court upheld the federal Bail Reform Act of 1984. The act's preventative detention provisions against facial due process and eighth amendment challenges.
- ▶ For the first time **public safety** was approved by the Supreme Court as a proper pretrial / bail consideration.
  - ▶ "The government's interest in preventing crime by arrestees is both legitimate and compelling." *Id.* at 749.
- ▶ The defendant's liberty interest may be outweighed by the compelling governmental / societal interest of effectively prosecuting crimes and public safety during the pretrial period.
- ▶ "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception. We hold that the provisions for pretrial detention in the Bail Reform Act of 1984 falls within that carefully limited exception." *Id.* at 759.

## Overview of the Pretrial Landscape

3. Legal requirements for a hold/release system

### "Requirements" for pretrial detention - U.S. v. Salerno, 481 U.S. 739 (1987)

- ▶ Who? (the "charge based net") ". . . the most serious of crimes."
- ▶ How? (the process) "The arrestee is entitled to a prompt detention hearing."
  - ▶ 1) PC - not a preliminary hearing
  - ▶ 2) "full-blown adversary hearing"
    - ▶ Defendants have right to counsel
    - ▶ Defendants may testify - "or present information by proffer or otherwise and cross-examine witnesses who appear at the hearing" (but no witnesses are required and rules of evidence do not apply)
  - ▶ 3) Prosecution must provide "clear and convincing evidence that no conditions of release can reasonably assure the safety of the community or any person."

See also, *In Re: Kenneth Humphrey, on Habeas Corpus* [A152056, 01/25/2018, California Court of Appeal, First Appellate District, Division 2], ([universitypretrial.org/viewdocument/in-re-humphrey-on-habeas-corpus-in](http://www.universitypretrial.org/viewdocument/in-re-humphrey-on-habeas-corpus-in))

## Overview of the Pretrial Landscape

Organizations with statements that support a reduced emphasis on money bail...

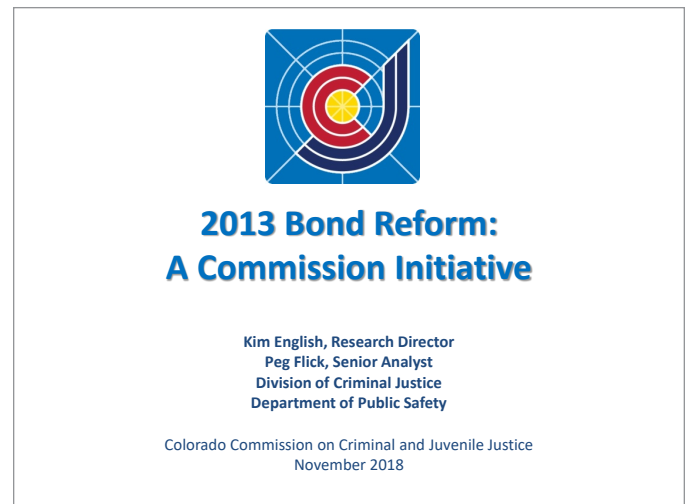


# Money Bond and Pretrial Release: The National Landscape, Legal Analysis, and Supreme Court Cases

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Presentation to the Colorado Commission on Criminal and Juvenile Justice  
November 9, 2018

## Appendix E: The Commission’s 2013 Bond Reform Effort



**Colorado Commission on Criminal & Juvenile Justice**

**BACKGROUND**

In 2013 the Commission passed several recommendations that focused on improving pretrial practices.

Primary among these was an effort to reduce the reliance on financial bonds (cash/surety bonds) to achieve pretrial release, and increase the use of risk assessment as a method for determining release.


The use of financial bonds assumes that **money** insures that individuals will show up in court and refrain from committing additional crimes

- In 2016, according to the U.S. Bureau of Justice Statistics, 65% of individuals in jail had not been convicted of a crime. That year more than 10.6M people were booked into jails nationwide
  - When in jail, people face losing jobs, falling behind in school, not getting needed medication, losing housing, losing custody of children.
    - 80% of women in jail are mothers

2013 Bond Reform, CCJJ 11/9/2018 2 of 16

**Colorado Commission on Criminal & Juvenile Justice**

**BACKGROUND**



Use of financial bonds allows individuals with money to obtain pretrial release regardless of their risk to the community while those without money remain in jail regardless of risk

- Raising \$400 for an emergency is a hardship for half of Americans (Federal Reserve, 2016)
- Research shows that people who can't afford financial bonds are 3-4x more likely to receive a sentence to jail or prison, and sentences are 2-3x longer (Lowencamp et al, 2013)

Bond schedules are developed by each jurisdiction. Bond schedules set arbitrary money amounts by crime type.

A study by *The Guardian* of bond schedules in California counties found a bond for **public intoxication** was:

- \$75 in Fresno County
- \$3,000 in San Francisco County
- \$10,000 in Mariposa County

2013 Bond Reform, CCJJ 11/9/2018 3 of 16



**Colorado Commission on Criminal & Juvenile Justice**

### BACKGROUND

House Bill 2013-1236, signed by the governor on May 11, 2013, incorporated three Commission recommendations:

1. Implement evidence-based decision making practices and standardized bail release decision making guidelines (including the use of empirically developed risk assessment instruments)
2. Discourage the use of financial bond for pretrial detainees and reduce the use of bonding schedules
3. Expand and improve pretrial approaches and opportunities in Colorado

C.R.S. 16-4-103—setting and selection of bond criteria

- Presumption of release under least-restrictive conditions unless the defendant is unailable
- Individualization of release conditions
- Mandatory consideration of a defendant’s financial condition
- Consideration of ways to avoid unnecessary pretrial detention

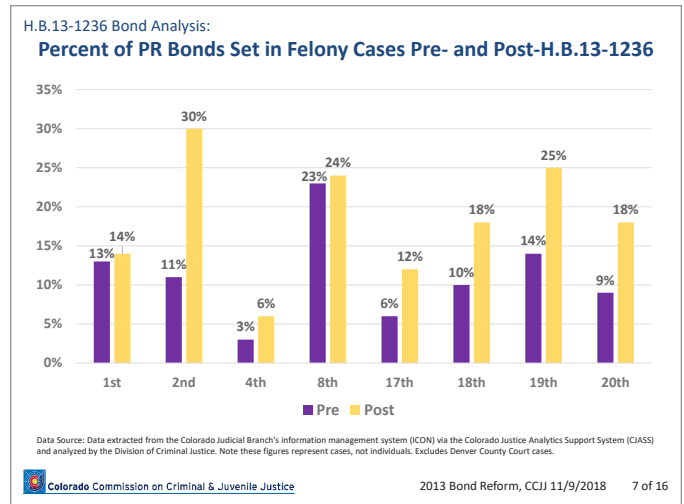
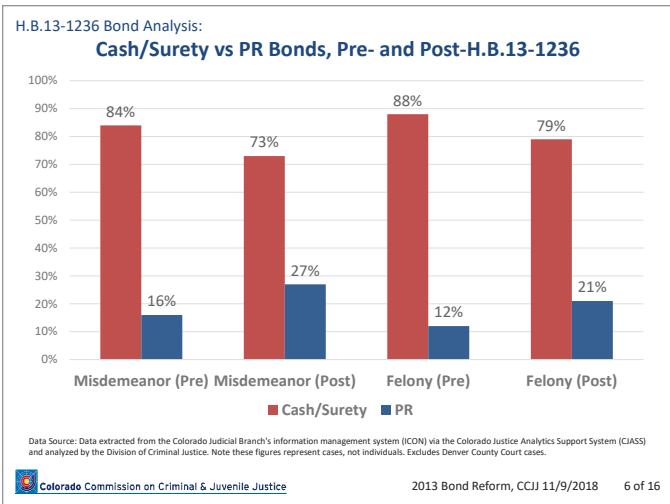
2013 Bond Reform, CCJJ 11/9/2018 4 of 16

**Colorado Commission on Criminal & Juvenile Justice**

### H.B.13-1236 Bond Analysis

- Cases filed 3 years pre- and post- H.B. 13-126
  - Pre- 2011 to 2013, Post- 2014 to 2016
  - Felony and Misdemeanor (excluding Denver County) cases
  - 650,000+ cases
- Bond set type: Personal Recognizance vs Cash/Surety
- Failure to Appear rate
- New Filing rate

2013 Bond Reform, CCJJ 11/9/2018 5 of 16



H.B.13-1236 Bond Analysis

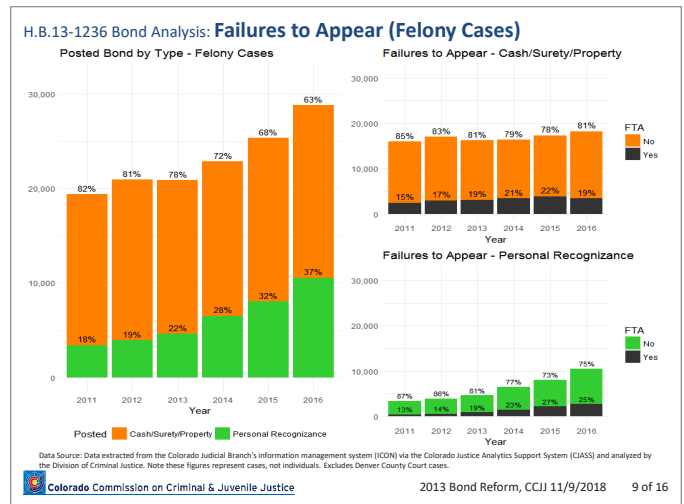
#### Bond type set in felony and misdemeanor cases for those with/without pre-trial supervision programs

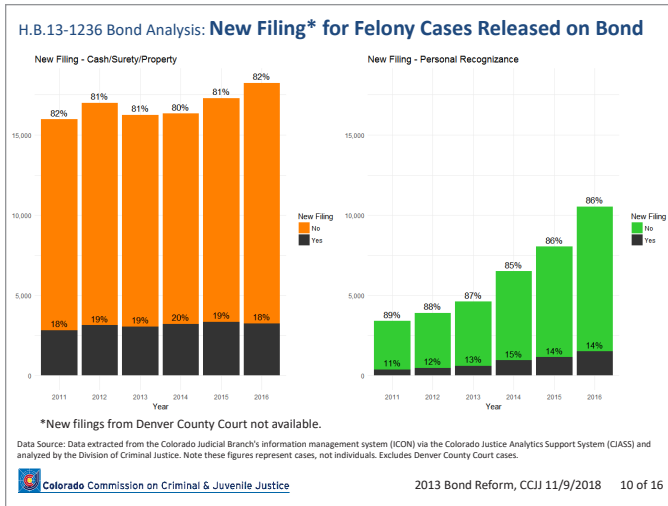
Bond Type	Pre		Post	
	%	N	%	N
<b>NO Pre-trial program</b>	<b>15%</b>	<b>45,673</b>	<b>14%</b>	<b>48,602</b>
Cash/Surety/Property	87%	39,722	79%	38,601
Personal Recognizance	13%	5,951	21%	10,001
<b>YES Pre-trial program</b>	<b>85%</b>	<b>262,515</b>	<b>86%</b>	<b>297,435</b>
Cash/Surety/Property	85%	224,244	74%	220,667
Personal Recognizance	15%	38,271	26%	76,768
<b>Total</b>	<b>100%</b>	<b>308,188</b>	<b>100%</b>	<b>346,037</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.

Counties with pretrial supervision programs: Adams, Alamosa, Arapahoe, Baca, Boulder, Broomfield, Costilla, Custer, Denver, Douglas, El Paso, Fremont, Garfield, Jefferson, La Plata, Larimer, Logan, Mesa, Montezuma, Morgan, Pitkin, Prowers, Pueblo, Weld.

2013 Bond Reform, CCJJ 11/9/2018 8 of 16





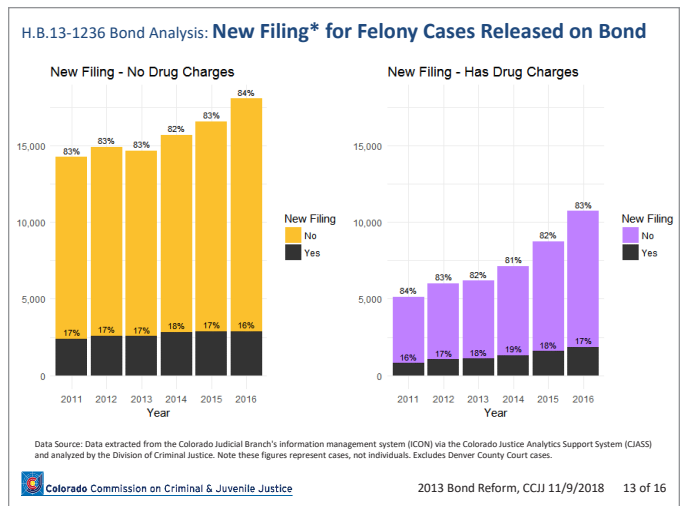
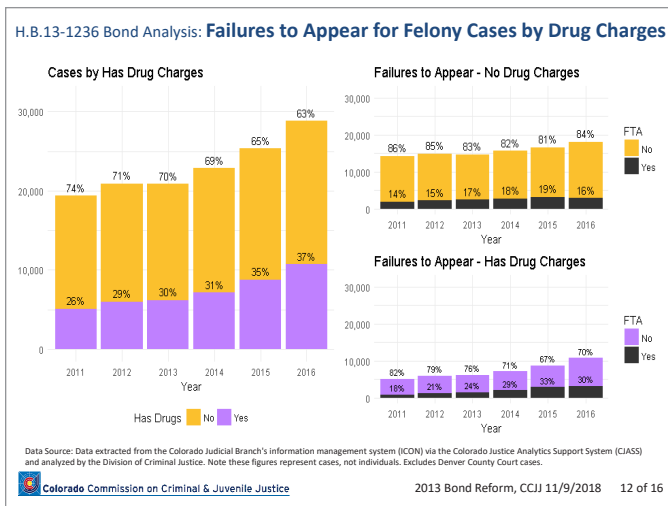
### H.B.13-1236 Bond Analysis: Top 10 New Filing\* Offenses for Felony Cases

Most serious offense category**	Pre		Post	
	%	N	%	N
Traffic Misdemeanor	24%	2,521	23%	3,025
Misdemeanor Assault <sup>1</sup>	22%	2,265	18%	2,469
Other Custody Violations <sup>2</sup>	7%	743	10%	1,326
Drug Possession	8%	794	8%	1,127
Theft	8%	826	6%	825
Drug Distribution	4%	413	5%	616
Other Property	4%	437	4%	541
Burglary	4%	407	4%	518
Felony Assault	3%	352	4%	535
Forgery/Fraud	3%	340	4%	529

\* New filings in Denver County court were not available.  
 \*\* Includes attempts, solicitation, and conspiracy. Conditions.  
<sup>1</sup> Misdemeanor assault includes Violation of a Protection order.  
<sup>2</sup> Other Custody Violations includes Violation of Bond.

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.

Colorado Commission on Criminal & Juvenile Justice | 2013 Bond Reform, CCJJ 11/9/2018 | 11 of 16



### H.B.13-1236 Bond Analysis: Felony Cases Bond Type Posted by Presence of Drug Charges

Bond Type	Pre		Post	
	%	N	%	N
<b>Cash/Surety/Property</b>	<b>81%</b>	<b>49,232</b>	<b>67%</b>	<b>51,867</b>
No drug charges	72%	35,537	69%	35,595
Has drug charges	28%	13,695	31%	16,272
<b>Personal Recognition</b>	<b>19%</b>	<b>11,916</b>	<b>33%</b>	<b>25,081</b>
No drug charges	69%	8,272	59%	14,725
Has drug charges	<b>31%</b>	<b>3,644</b>	<b>41%</b>	<b>10,356</b>
<b>Total</b>	<b>100%</b>	<b>61,148</b>	<b>100%</b>	<b>76,948</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.

Colorado Commission on Criminal & Juvenile Justice | 2013 Bond Reform, CCJJ 11/9/2018 | 14 of 16

- ### Colorado Commission on Criminal & Juvenile Justice
- #### H.B.13-1236 Bond Analysis: Summary
- Comparing the 3 year pre- and post- periods:
- Statewide, the use of PR bonds for *felony cases* increased from 12% to 21% (75% increase);
    - PR bond for *misdemeanor cases* increased from 16% to 27% (69% increase)
  - Increased use of PR Bond varied widely across districts
  - Statewide, FTA's for felony cases increased from 16% to 25% for PR bonds (56% increase), and 17% to 21% for Cash/Surety bonds (23% increase).
  - New filings while on bond increased for both Cash/Surety (18% to 19%) and PR (12% to 14%) bond, but the increases were small.
- Colorado Commission on Criminal & Juvenile Justice | 2013 Bond Reform, CCJJ 11/9/2018 | 15 of 16



**Colorado Commission on Criminal & Juvenile Justice**

H.B.13-1236 Bond Analysis: **Summary**

Comparing the 3 year pre- and post- periods:

- The percent of felony cases on PR bond with drug charges increased from 31% to 41% (32% increase).
- Cases with drug charges failed to appear at a much higher rate (30% vs 18%).

***H.B. 2013-1236: Bond Reform Impact Analysis*** (March 2018)

Impact Analysis Page:

[Colorado.gov/dcj-ors/ors-impact](http://Colorado.gov/dcj-ors/ors-impact)

Document:

[cdpsdocs.state.co.us/ors/docs/impact/2018-03\\_ORs-BondReformImpact-HB13-1236.pdf](http://cdpsdocs.state.co.us/ors/docs/impact/2018-03_ORs-BondReformImpact-HB13-1236.pdf)

## **Appendix F: Mental Health/Behavioral Health Update**





## **CBHC Update on SB17-207: *Implementing Crisis System Enhancements***

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Described as “landmark legislation” by Disability Law Colorado in Senate Committee testimony, SB207 is a historic advancement in how Colorado communities will respond to individuals experiencing a behavioral health crisis. The bill strengthens Colorado’s statewide behavioral health crisis response system to achieve the goal of ending the use of jails for those in crisis who have not been charged with a crime. Additionally, the bill makes changes to Colorado’s civil commitment statute that are intended to divert individuals experiencing a mental health crisis from entering the criminal justice system at the earliest point possible.

### **SB207 Funding**

Funding bolsters the statewide Behavioral Health Crisis System and related services by a total of \$9,428,755:

- \$2 million divided equally among the four designated regions for crisis service enhancements;
- \$976,000 to create a Crisis Stabilization Unit on the western slope;
- \$440,000 divided equally among the four designated regions for crisis coordinators to work with law enforcement;
- \$5.2 million for implementation and evaluation of Law Enforcement Assisted Diversion (LEAD) and police/clinician Co-Responder and other diversion pilot award programs;
- \$107,000 for first responder training development; and
- \$535,000 to implement and evaluate secure transportation pilot programs for individuals in behavioral health crisis in rural parts of the state.

### **Robust Stakeholder Engagement**

In preparation for and following the passage of SB207, Colorado’s community behavioral health system collaborated closely with their law enforcement, county human service departments, fire departments, EMS providers, public health departments, hospitals, and other community partners to identify where service enhancements will create the most impact. ***This engagement process comprised more than 130 agencies around the state, including 75 individual police departments and Sheriff’s offices, and included:***

- Regional and community-level data analyses and needs assessments;
- Workgroups, stakeholder meetings, and other local feedback committees;
- Ongoing, direct engagement and partnership development with criminal justice partners;
- Community-driven proposals developed to enhance the crisis system in accordance with SB207, including gathering signatures and letters of support by law enforcement and other community partners; and
- Collaboration with the Office of Behavioral Health in the Department of Human Services to refine proposals and finalize scopes of work for SB207 funding.

For additional details, please contact Frank Cornelia, Director of Government & Community Relations for the Colorado Behavioral Healthcare Council, at [fcornelia@cbhc.org](mailto:fcornelia@cbhc.org) or at 720-454-570.

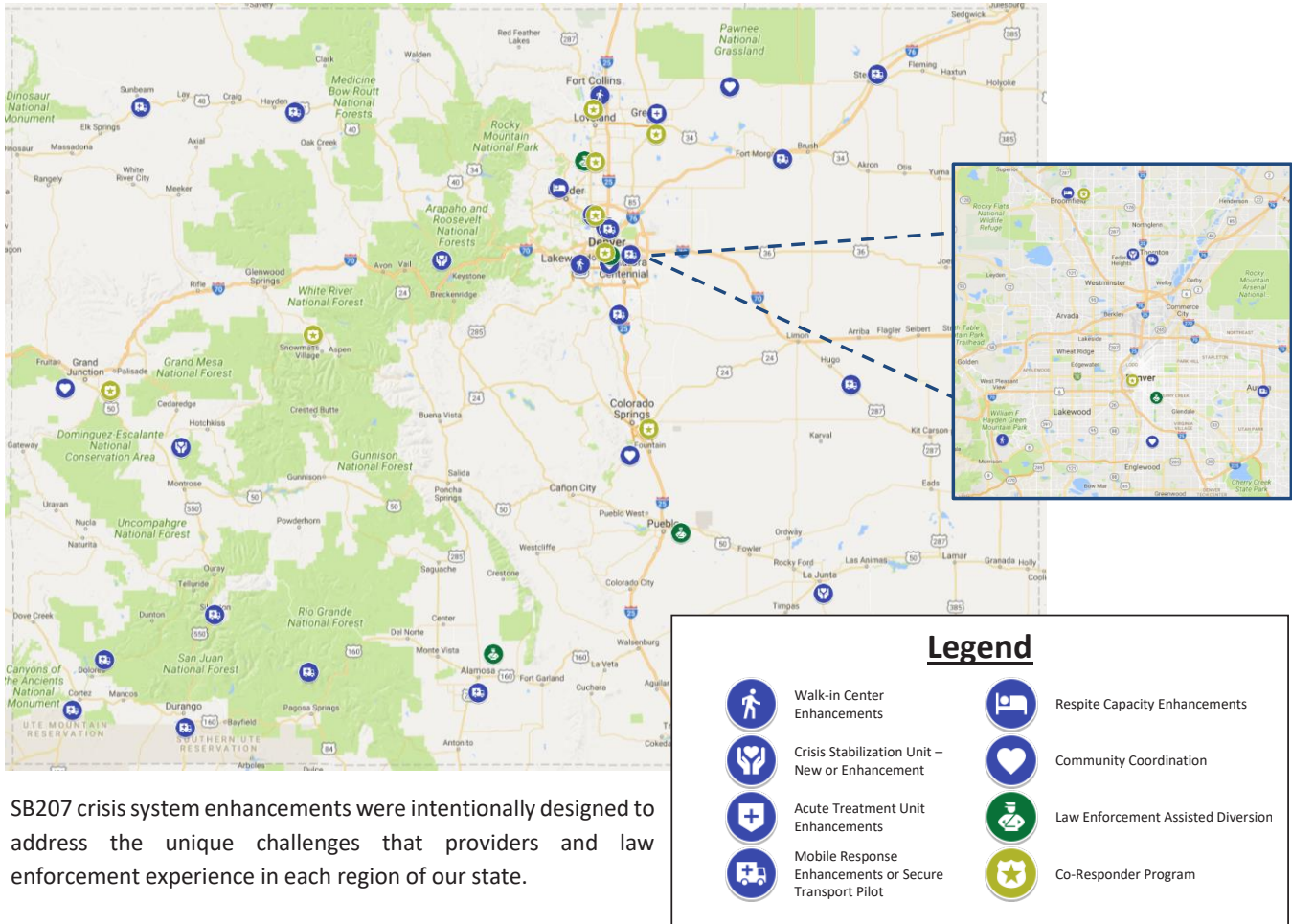


### Crisis System Enhancements

Allocations of SB207 funding leverage and enhance existing resources to thoughtfully address gaps in the service continuum and eliminate reliance on jails for managing individuals in behavioral health crisis. These enhancements, now built into contracts with the crisis services providers, are the direct result of the comprehensive stakeholder engagement process described above and include:

- Enhancing **walk-in and crisis stabilization capacity and security**;
- Co-locating facilities where possible to **streamline drop-off procedures for law enforcement**, including designated law-enforcement entrances and increased procedural education;
- Increasing **respite capacity and partnerships with detox and other healthcare systems**;
- Enhancing **mobile response and transportation capacity**;
- Hiring **regional crisis system coordinators to support law enforcement and other community partners**; and
- **Increasing staffing in crisis facilities** to prepare for volume increases related to SB207.


### Locations and Types of New Crisis Resources Available via SB207



SB207 crisis system enhancements were intentionally designed to address the unique challenges that providers and law enforcement experience in each region of our state.

For additional details, please contact Frank Cornelia, Director of Government & Community Relations for the Colorado Behavioral Healthcare Council, at [fcornelia@cbhc.org](mailto:fcornelia@cbhc.org) or at 720-454-570.

# Appendix G: Council of State Governments: Improving Outcomes for Youth



## Executive Summary Colorado Improving Outcomes for Youth (IOYouth)

Presentation to the Colorado Commission on Criminal and Juvenile Justice, December 14, 2018

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### Executive Summary: Colorado Improving Outcomes for Youth (IOYouth) Launched in May in Partnership with CSG Justice Center


- Governor Hickenlooper established a statewide task force to oversee the initiative
- Council of State Governments (CSG) Justice Center, a national nonprofit, nonpartisan membership association of state government officials partnered with Colorado on this initiative
- IOYouth is supported by the U.S. Department of Justice through the National Reentry Resource Center

Adam Zarin, Office of Governor Hickenlooper	Larrie Meyers Miteles, Provers County Human Services
Anders Jacobson, Division of Youth Services	Honorable Leslie Gerbracht, 3 <sup>rd</sup> Judicial District
Honorable Ann Gail Meinster, 1 <sup>st</sup> Judicial District	Sheri Darz, Office of the Child Representative
Arnold Hanuman, CO District Attorneys' Council	Lindsey Sandoval, CO State Public Defenders
Barrie Newberger-King, CO State Public Defenders	Meg Williams, CO Juvenile Parole Board
Chief Bill Kilpatrick, City of Golden	Mike O'Rourke, 11 <sup>th</sup> Judicial District
Co-Chair Senator Bob Gardner, CO State Senate	Representative Lois Landgraf, CO State House of Representatives
Honorable Brian Boatright, CO State Supreme Court	Co-Chair Representative Pete Lee, CO State House of Representatives
Chris Ryan, CO Judicial Branch	Rebecca Gleason, 18 <sup>th</sup> Judicial District
Representative Daina MacIsaac-Jenet, CO State House of Representatives	Reggie Bicha, CO Department of Human Services
Daniel Makeley, Douglas County Human Services	Stacie Colling, Alternate Defense Counsel
Elise Logemann, CO Bar Association	Will Hays, Hilltop Community Resources, Inc.
Emily Humphrey, 17 <sup>th</sup> Judicial District	Jeff Cuneo, CO Juvenile Defender Center
Jenifer Morgen, 17 <sup>th</sup> Judicial District	Rebecca Wallace, American Civil Liberties Union
Julie DeNicola, Stepping Stones Advocacy	

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### Executive Summary: Colorado IOYouth Based on a Comprehensive Assessment of the Juvenile Justice System


- Following the launch of the IOYouth Initiative in May, CSG Justice Center staff spoke with a wide array of stakeholders to learn more about opportunities and challenges to improve outcomes for youth.
- CSG Justice Center staff gathered feedback from stakeholders across the state to ensure a diversity of perspectives, including through 9 site visits, calls and meetings with more than 100 people, and 6 juvenile facility visits.
- Case-level juvenile justice data and survey data from multiple sources also informed the assessment results.
- Task Force Members reached consensus on policy recommendations based on assessment findings to translate into legislation for 2019 session.




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### Executive Summary: Colorado IOYouth Resulted in Consensus-Based Policy Recommendations

- Expand accessibility to evidence-based, pre-adjudication juvenile diversion programs across the state;
- Develop clear criteria for detention eligibility in order to limit secure detention for youth;
- Target CYDC resources more efficiently by focusing resources on youth most at risk of secure detention in order to reduce admissions to secure detention and prevent over supervision in the community.
- Adopt a validated risk and needs assessment instrument to identify a youth's risk of reoffending and use results to inform court decision making and case planning;
- Establish statewide standards for juvenile probation that are based in research;
- Improve the effectiveness of community-based services for youth on probation and parole; and
- Expand the use of kinship care for youth in detention and commitment and under consideration for out-of-home placement.



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## Policy Recommendations Colorado Improving Outcomes for Youth (IOYouth)

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### Best Practices in Juvenile Diversion

- ❖ Court involvement for low-risk youth often does more harm than good and takes limited resources away from focusing interventions on youth whose behavior poses a public safety risk.
- ❖ Most low risk youth grow out of their behavior and stop reoffending without system intervention.
- ❖ Diversion is a more cost effective public safety strategy than court processing for low risk youth.
- ❖ Youth's current offenses are a poor predictor of future risk to reoffend.
- ❖ Restorative justice practices are an effective way to hold youth accountable for repairing the harm caused to victims and communities and can reduce reoffending and increase victim's satisfaction with the justice system.



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**1** Expand accessibility to juvenile diversion programs across Colorado and establish statewide policies and guidelines for juvenile diversion.

**1.1** Establish a block grant to allocate funds to each judicial district for the establishment and implementation, or continuation, of a diversion program that is aligned with evidence-based practices and the statewide definition of diversion, for juveniles with offenses that can be filed at the district court level.

**2.** Establish a statewide definition of diversion. Diversion shall require the least amount of oversights and restrictions as necessary to hold the juvenile accountable and support public safety. Goals and objectives of diversion are:

- ❖ to provide eligible pre-adjudicated juveniles with an alternative to adjudication that emphasizes accountability, acceptance of responsibility, and restorative practices;
- ❖ to reduce risk and repair harm to victims and communities;
- ❖ to minimize recidivism and improve positive youth outcomes; and
- ❖ to ensure appropriate services for all eligible juveniles.



32


**1** Expand accessibility to juvenile diversion programs across Colorado and establish statewide policies and guidelines for juvenile diversion.

**1.2 Cont.**

Jurisdictions may not deny diversion to juveniles solely for the following reasons:

- ❖ based on the juvenile's or family's inability to pay
- ❖ based on the juvenile's previous or current involvement with the Department of Human Services


**1.3** Adopt and use a validated risk screening tool to inform all juvenile diversion eligibility decisions, unless a determination has already been made to divert the juvenile. DA's offices shall conduct these screenings, or DA's offices may opt to collaborate or contract with an alternative agency to conduct the screenings, and the results of the screenings shall then be made available to the DA's office. Juveniles screened will be referred for additional assessments if necessary.



33

**1** Expand accessibility to juvenile diversion programs across Colorado and establish statewide policies and guidelines for juvenile diversion.


**1.4** Develop outcome measures and identify data that each judicial district shall track and report annually to the state agency administering the juvenile diversion block grant, including, but not limited to demographic data, risk level, offense, program participation, and outcome/completion data. The state agency shall also provide technical assistance to diversion programs to support the uniform collection of data and reporting, and program development. The state agency shall provide annual individual program reports and a statewide report to DA's offices and the legislature.



34

**Best Practices in the Use of Detention**

- ❖ Research demonstrates that detention can have a negative impact on the mental and physical well-being of youth and when used inappropriately, detention may make it more likely that youth will reoffend.
- ❖ Youth who are detained are more likely to penetrate deeper into the juvenile justice system than similar youth who are not detained.
- ❖ Detention alternatives should be based on the principle of using the least restrictive setting possible and on identifying and addressing youth's needs as identified through validated screening tools.




35

**2** Develop clear criteria for detention eligibility in order to limit secure detention for juveniles who pose a risk of harm to others or risk of flight from prosecution, and community-based alternatives are insufficient to mitigate this risk.

**2.1** Require that the CYDC Advisory Board (or a subcommittee of the Advisory Board) revise the juvenile detention screening and assessment guide (JDSAG) or develop a new research-based detention screening instrument to be used statewide. The tool must identify and mitigate any disparate impacts based on race, sex, national origin, economic status, and child welfare involvement. The Board or subcommittee must include representatives from law enforcement, district attorneys, public defenders, judicial officers, and probation, in addition to CYDC, DYS, and DHS leaders.

a. The subcommittee will be tasked with identifying measures for the detention screening instrument, determining cutoff scores for each level on the detention continuum, and identifying how the instrument should be validated and piloted


b. The subcommittee shall establish statewide override policies that minimize subjective decisions to hold a juvenile in secure detention, while allowing for local flexibility.



36

**2** Develop clear criteria for detention eligibility in order to limit secure detention for juveniles who pose a risk of harm to others or risk of flight from prosecution, and community-based alternatives are insufficient to mitigate this risk.

**2.2** The results of the detention screening instrument, among other factors, shall be used statewide by CYDC and courts to inform all detention decisions. Court records must include data on detention screening scores, and if the score does not mandate secure detention, the rationale for the override. The CYDC shall compile and report to the legislature annually on the use and justification of overrides of the detention risk screening instrument that result in detentions. Hearings shall be held periodically to ensure the continued need for detention unless the juvenile has waived his/her right to a hearing.




37

**2** Develop clear criteria for detention eligibility in order to limit secure detention for juveniles who pose a risk of harm to others or risk of flight from prosecution, and community-based alternatives are insufficient to mitigate this risk.

Secure detention shall be restricted for the following populations of youth unless the court makes a finding that all alternatives to secure detention have been exhausted:

**2.3**

- ❖ Youth who have not committed, or have been accused of committing, a delinquent act unless otherwise found in contempt of court
- ❖ Delinquent and non-delinquent youth who have been placed in the legal custody of a county department of social/human services pursuant to a petition in dependency and neglect and are solely waiting out of home placement.
- ❖ Youth who are committed to the legal custody of the Colorado Department of Human Services, Division of Youth Services, and are solely awaiting a DYS placement.
- ❖ Youth who at admission, require medical care, are intoxicated, or under the influence of drugs, to an extent that is beyond the scope of the detention facility's medical service capacity.
- ❖ Youth who are solely assessed as suicidal or exhibit behavior placing them at imminent risk of suicide.
- ❖ Youth who have not committed a delinquent act but present an imminent danger to others or to himself or herself or appears to be gravely disabled as a result of a mental health condition.




38

**2** Develop clear criteria for detention eligibility in order to limit secure detention for juveniles who pose a risk of harm to others or risk of flight from prosecution, and community-based alternatives are insufficient to mitigate this risk.

Youth shall not be placed in secure detention solely because of or in order to:

- ❖ A lack of supervision alternatives, service options or more appropriate facilities;
- ❖ The community's inability to provide treatment or services;
- ❖ A lack of supervision in the home or community;
- ❖ A parent, guardian or legal custodian avoiding legal responsibility;
- ❖ A risk of self-harm;
- ❖ An attempt to punish, treat, or rehabilitate such child;
- ❖ A request by a victim, law enforcement, or the community; or
- ❖ Permit more convenient administrative access to him or her; or
- ❖ Facilitate further interrogation or investigation.

**2.3 cont.**




39

**3** Target CYDC resources more efficiently by focusing resources on juveniles most at-risk of secure detention in order to reduce admissions to secure detention and prevent over supervision in the community.

**3.1** The CYDC Advisory Board shall establish clear criteria for which pre-disposition juveniles at-risk of secure detention should be referred to pre-disposition supervision programs funded through CYDC and criteria for which juvenile can be released without pre-disposition supervision based on results on the detention screening instrument.


**3.2** The CYDC Advisory Board shall establish clear criteria for which sentenced juveniles at risk-of secure detention should be referred to supervision programs funded through CYDC. Criteria for the use of CYDC funds for sentenced juveniles shall prioritize those juveniles at risk of secure detention and assessed as moderate or high risk to reoffend on a validated risk and needs assessment.



40

**3** Target CYDC resources more efficiently by focusing resources on juveniles most at-risk of secure detention in order to reduce admissions to secure detention and prevent over supervision in the community.


**3.3** The CYDC Advisory Board shall review data on the use of CYDC funding and its impact on detention at least every 2 years. The review shall look at the use of secure detention for juveniles solely for assessment and planning purposes, (specifically looking at juveniles released to the community prior to disposition that could otherwise be served immediately in the community), as well as a review on where services are taking place, whether in detention or in the community.



41

**Best Practices in Disposition & Sentencing**

- ❖ Match youth with the most appropriate level and length of supervision based primarily on the youth's assessed risk of reoffending.
- ❖ Minimize system interventions for low risk youth and focus system resources on high risk youth.
- ❖ Base supervision terms on youth's risk level and offense and their progress under supervision.
- ❖ Minimize supervision lengths beyond 12 months due to diminishing returns (high cost of incarceration and research demonstrating reduced outcomes).




42

**4** Select and adopt a validated risk and needs assessment tool to inform court decision making and establish policies to require and support the use of the tool.

**4.1** Establish a statewide oversight committee with diverse representation from relevant stakeholder groups (prosecutors, defense attorneys, diversion, judges, DYS, probation, guardian ad litem, juvenile mental health professionals, among others) that shall be responsible for:


- ❖ selecting a validated risk and needs assessment tool to be used to inform court decision making and determine the appropriate actions to take for each juvenile subject to the jurisdiction of the juvenile court;
- ❖ establishing guidelines and requirements around when the risk and needs assessment shall be conducted and for which populations of juveniles;
- ❖ selecting a validated mental health screening tool(s) to determine the appropriate actions to take for each juvenile in need of supervision;
- ❖ developing a plan to collect and report data on the risk assessment results and corresponding sentence, supervision, and service matching decisions to the legislature.
- ❖ selecting a validated risk screening tool to inform juvenile diversion eligibility decisions;
- ❖ developing performance measures and identifying data that each judicial district shall track and report annually to the state agency administering the new juvenile diversion block grant;
- ❖ developing guidelines to ensure that conditions of probation are matched to juvenile's identified risk and needs; and
- ❖ developing shared performance measures for community-based providers serving juveniles on probation and parole.



43

**4** Select and adopt a validated risk and needs assessment tool to inform court decision making and establish policies to require and support the use of the tool.


**4.2** DYS, in consultation with the state oversight committee, shall establish a facility length of stay matrix, facility release criteria, and objective criteria to determine eligibility and admission into reintegration centers/step down facilities that is based on juveniles' risk of reoffending, as well as the seriousness of their offense, and progress in meeting treatment goals. The matrix and criteria established must take into account special criteria and requirements for certain categories of offenses.



44

**Best Practices in Juvenile Probation Supervision and Services**

- ❖ Position probation officers as agents of positive behavior change rather than compliance monitors by reducing caseloads and focusing supervision on skill development.
- ❖ Focus conditions of supervision on the root causes of behavior and restorative justice practices.
- ❖ Engage youth and families in the development of case plans and in case decision making.
- ❖ Promote and fund only those system interventions demonstrated by research to be effective at reducing recidivism and improving other youth outcomes.
- ❖ Employ graduated responses and incentives to hold youth accountable, promote behavior change, and minimize probation violations.




45

**5** Establish statewide standards for juvenile probation across Colorado that are aligned to research-based policies and practices.

**5.1** The state court shall establish statewide standards for juvenile probation that are aligned with research-based practices, and premised on a statewide definition of probation whose purpose is to serve as a sentencing alternative to the courts and reduce the incidence of crime through the design and implementation of research based policies, practices and standards; to set forth conditions of supervision and match juveniles to services that address identified risk and needs; and to achieve the successful completion of their agreement. Areas of focus for probation standards include, but are not limited to :


- ❖ Aligning probation staffing and workload to more effectively supervise and work with juveniles
- ❖ Developing guidelines around early termination policies
- ❖ Establishing common elements for case planning that are informed by risk and needs assessment results, among other factors
- ❖ Establishing common elements for the use of out-of-home placements and the Division of Youth Services



46

**5** Establish statewide standards for juvenile probation across Colorado that are aligned to research-based policies and practices.


**5.2** Local probation departments must adopt and use a statewide juvenile graduated response and incentives grid, or a locally developed grid aligned to best practices, to inform responses to probation violations. The state court shall collect data related to the use of responses and incentives, grid compliance and program outcomes, and shall include an internal process for reviewing responses that are challenged by the juvenile.



47

**6** Improve the effectiveness of community-based services for youth on probation and parole.

**6.1** Establish shared performance measures that service providers receiving judicial, DYS and other state funds to provide services to juveniles in the juvenile justice system must track and report related to youth outcomes and develop a plan to collect and report data on these measures. State agencies, including the judicial department, contracting with service providers for these purposes shall report on these performance measures annually, and a consolidated report shall be made available annually to the legislature, chief justice, and the governor.



48


**7** Expand the use of kinship care for juvenile justice involved youth in detention and commitment and under consideration for out-of-home placement.

**7.1** Require parents of a juvenile placed in detention or considered for out-of-home placement to complete an advisement relative affidavit within a specified time period or prior to the next hearing on the matter.

**7.2** Allow for a juvenile screened for detention who does not require physical restriction/detention but who may not return home to be given temporary care with his or her grandparent or an immediate family member not residing in the home of the juvenile.

**7.3** Allow for the release of a juvenile to the custody of a relative or a person with a significant relationship to the child at the conclusion of a detention hearing.

**7.4** Require that kinship placement be explored prior to the use of out-of-home placement for juvenile justice involved youth (detention and probation)



49

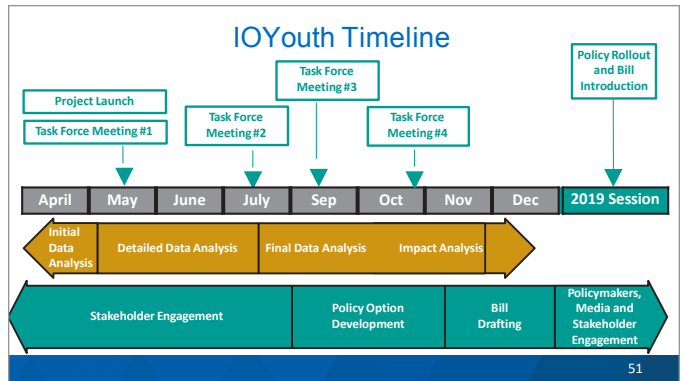

### Next Steps

**1** Work with state and local leaders to translate policy recommendations into legislative language and introduce legislation in the 2019 legislative session

**2** Engage task force members, media, policymakers, and other stakeholders to garner support during the legislative process and throughout implementation



50

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The presentation was developed by members of The Council of State Governments Justice Center staff. The statements made reflect the views of the authors, and should not be considered the official position of The Council of State Governments Justice Center, the members of The Council of State Governments, or the funding agency supporting the work.

# Appendix H: Trends and Issues in Criminal Justice

## Trends and Issues in Criminal Justice



Kim English, Research Director  
Colorado Division of Criminal Justice

Presented to the Colorado Commission on Criminal and Juvenile Justice  
March 8, 2019

## Many important trends include....

- Law enforcement increasing use of co-responder models
- Expanding the vote for persons with felony convictions (in CO, allowing persons on parole to pre-register to vote prior to completing their sentences)
- Raise the age for juvenile court (from 16, 17 to 18)
- Addressing collateral consequences (CO passed two bills in 2018 from Commission recommendations)
- Sentencing reform (FL removed language preventing retroactive application of sentencing reforms)
- Addressing racial disparity (CT expanded the state's racial impact statement; CO enacted CLEAR Act)
- Bail/bond reform (NJ, CA, CO)

## Many important trends include....

- Minority over-representation continues
  - Findings from the most recent CLEAR Act annual report of criminal justice decision points by race/ethnicity

In 2017, statewide

Blacks represented 4% of the adult state population and accounted for...

- 12% of arrests
- 11% of adult district court filings
- 10% of cases sentenced

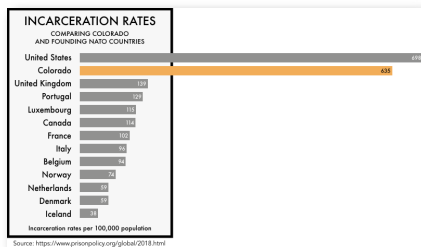
Hispanic adults represented 20% of the population and accounted for...

- 29% of arrests
- 30% of adult district court filings
- 30% of cases sentenced

<https://www.colorado.gov/dcj-ors/ORS-SB185-2017>



## Let's start with incarceration



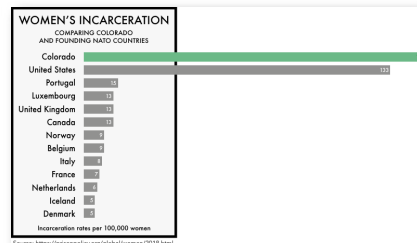
## Women in jail and prison

Half of women in prison have children

80% of women in jail have children

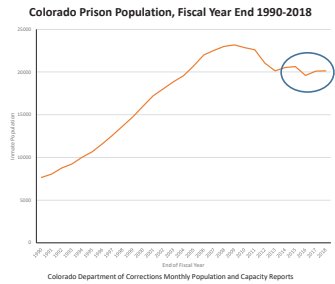
Children with incarcerated mothers are five times more likely to end up in foster care than those with incarcerated fathers are

One in nine Black children has a parent who is, or has been, incarcerated



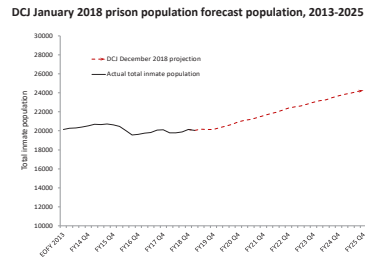
Adolescent boys with an incarcerated mother are twenty-five per cent more likely to drop out of school, and have a higher chance of ending up incarcerated themselves

### Prison population is at capacity



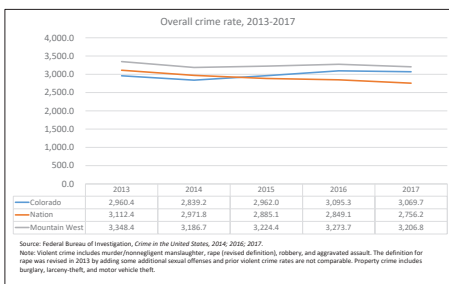
Colorado Commission on Criminal & Juvenile Justice Trends and Issues in Criminal Justice, 3/8/2019 7 of 46

### DCJ Prison Population Forecast



Colorado Commission on Criminal & Juvenile Justice Trends and Issues in Criminal Justice, 3/8/2019 8 of 46

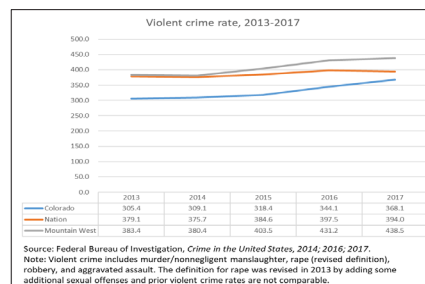
### Overall crime rate in Colorado (Blue)



Overall CO crime rate declined by .8% between 2016 and 2017

Colorado Commission on Criminal & Juvenile Justice Trends and Issues in Criminal Justice, 3/8/2019 9 of 46

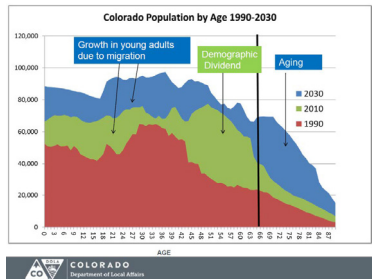
### Violent crime increasing in Colorado



CO violent crime rate increased 8% between 2015 and 2016, and 7% between 2016 and 2017

Colorado Commission on Criminal & Juvenile Justice Trends and Issues in Criminal Justice, 3/8/2019 10 of 46

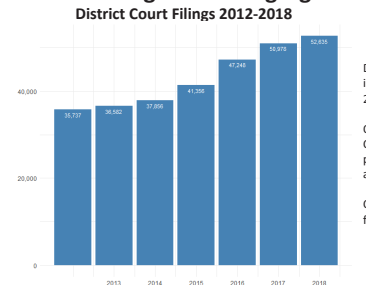
### Large in-migration of at-risk age group



At risk for crime and for victimization

Colorado Commission on Criminal & Juvenile Justice Trends and Issues in Criminal Justice, 3/8/2019 11 of 46

### District court filings increasing significantly

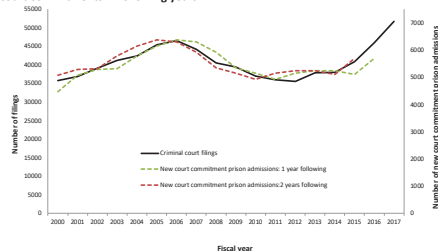


District court filings increased 42.6% from CY 2013 to 2018. Over the same period Colorado's adult population increased by about 10.4%. Controlling for population, filings increased 29.3%.

Colorado Commission on Criminal & Juvenile Justice Trends and Issues in Criminal Justice, 3/8/2019 12 of 46

### Felony filings correlated with prison admissions

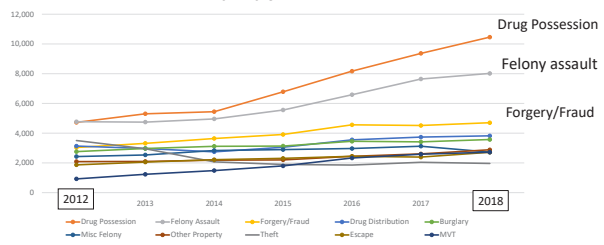
Correspondence of Colorado criminal court filings FY 2000 through FY 2017 and new court commitments in following years



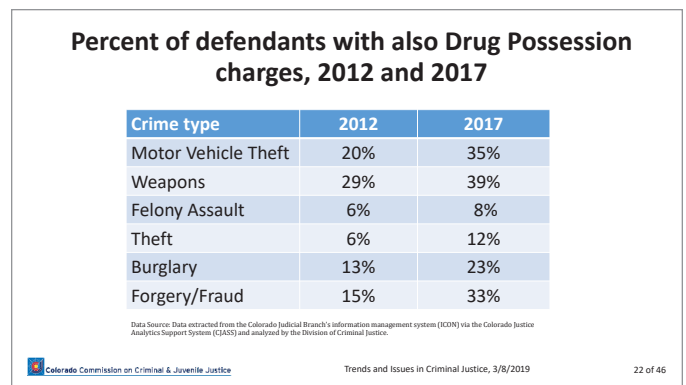
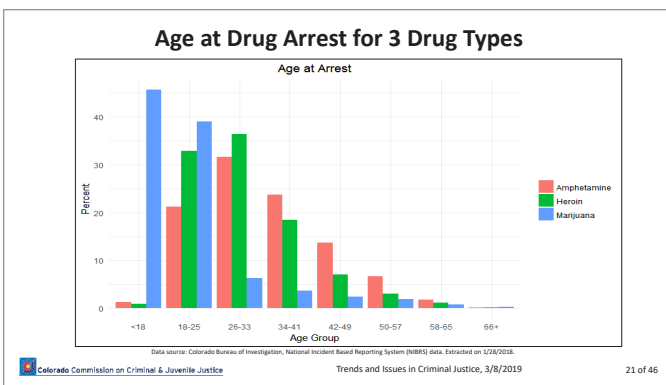
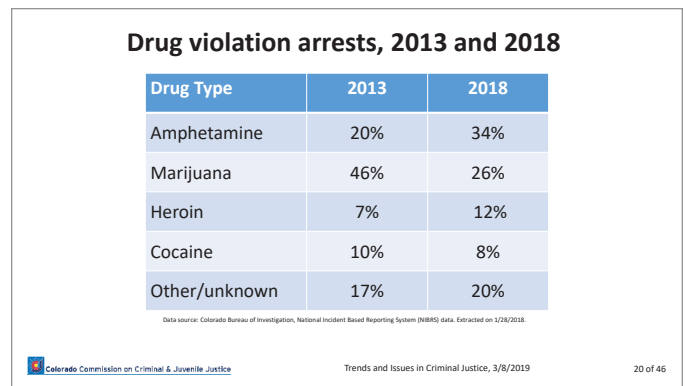
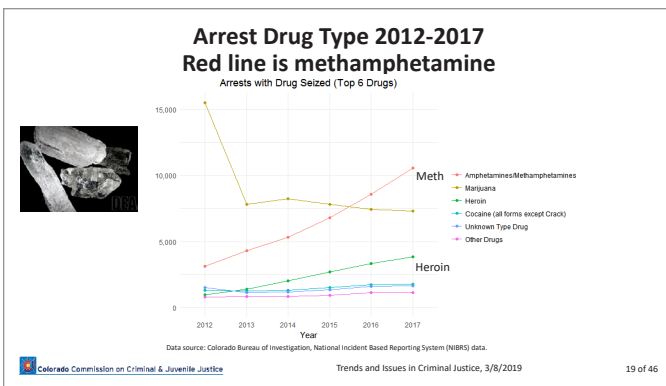
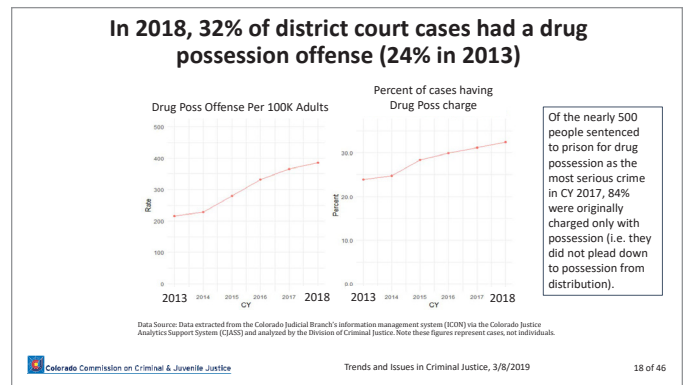
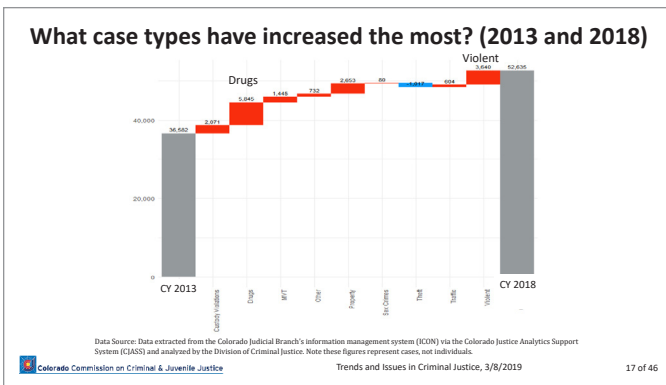
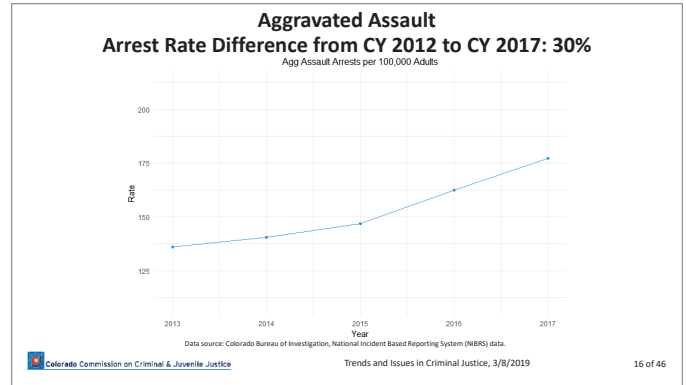
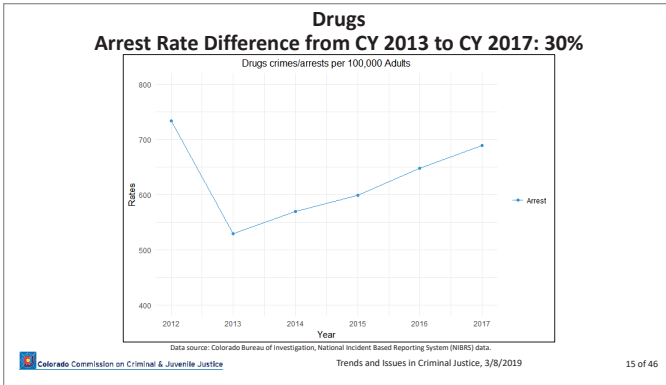
Colorado Commission on Criminal & Juvenile Justice Trends and Issues in Criminal Justice, 3/8/2019 13 of 46

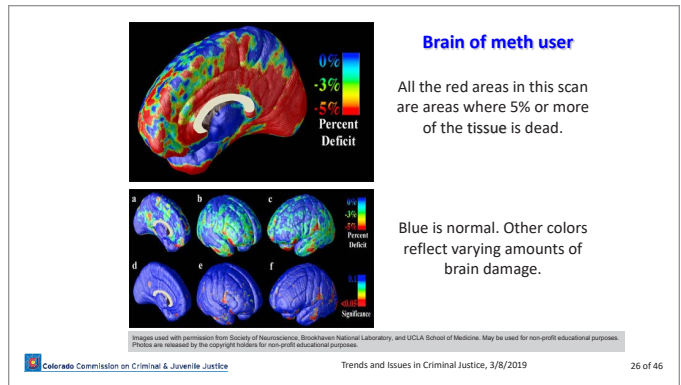
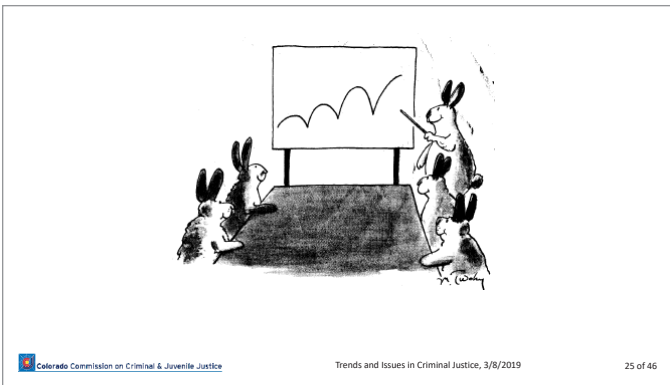
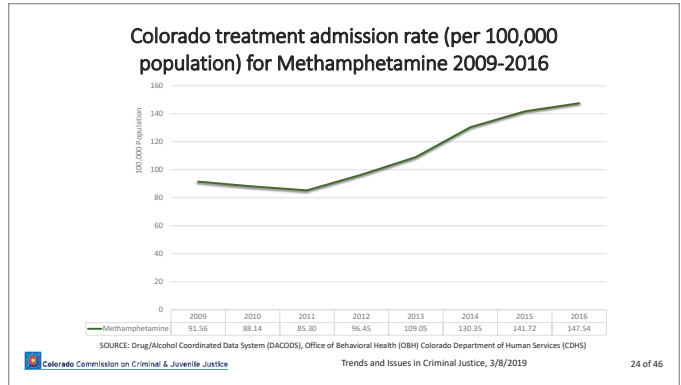
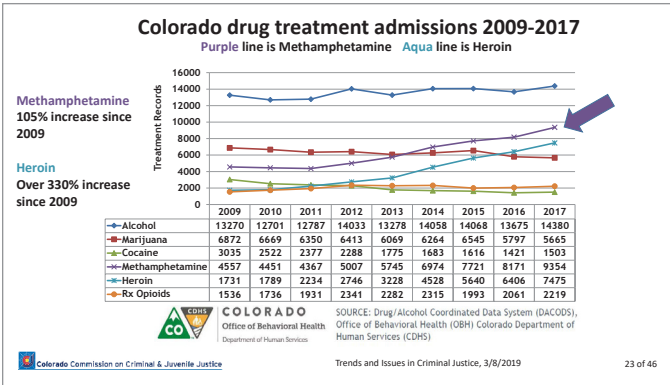
### Increase in filings driven by drug possession and assault

District Court Cases Top 10 Most Serious Filing Charge 2012-2018



Colorado Commission on Criminal & Juvenile Justice Trends and Issues in Criminal Justice, 3/8/2019 14 of 46

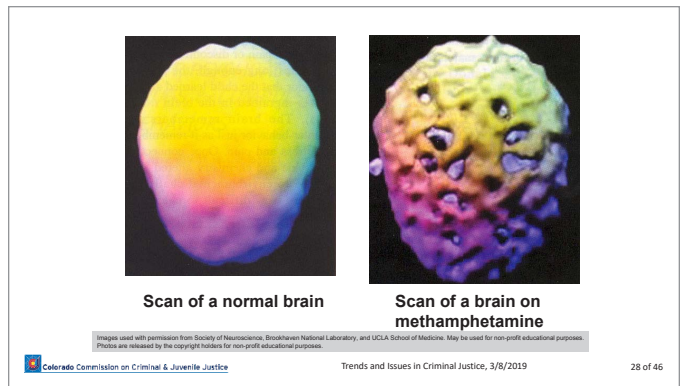




National Institute of Mental Health:  
Addiction to drugs is a mental illness

<https://www.nimh.nih.gov/health/topics/substance-use-and-mental-health/>

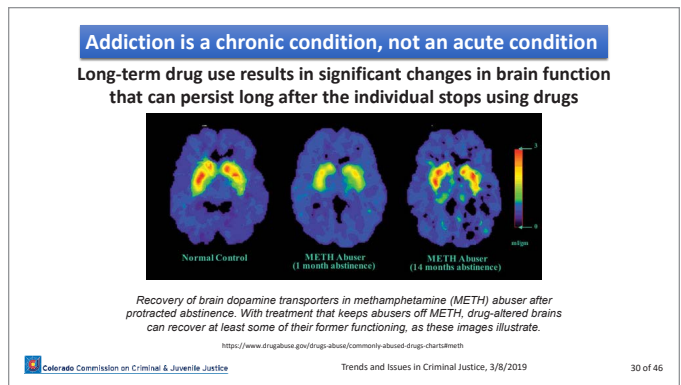
Colorado Commission on Criminal & Juvenile Justice Trends and Issues in Criminal Justice, 3/8/2019 27 of 46



### Health effects of methamphetamine

Possible Health Effects	
Short-term	Increased wakefulness and physical activity; decreased appetite; increased breathing, heart rate, blood pressure, temperature; irregular heartbeat.
Long-term	Anxiety, confusion, insomnia, mood problems, <b>violent behavior</b> , paranoia, hallucinations, delusions, weight loss, severe dental problems ("meth mouth"), intense itching leading to skin sores from scratching.

Colorado Commission on Criminal & Juvenile Justice Trends and Issues in Criminal Justice, 3/8/2019 29 of 46



### Behavioral Health Treatment Resources: Critical Need

- In 2017, Colorado ranked 3rd in the country for people needing but not receiving treatment for illicit drug use at a substance abuse treatment facility. (SAMHSA/NSDUH)
- Nationally, one in ten people who needed drug treatment received it. (DHHS, Surgeon General's Report on Alcohol, Drugs, and Health, 2016)
  - Of these, about half get Medication Assisted Treatment
  - MAT is rarely received long enough (New York Times 12/18/18)

### Addiction Treatment Works

- Long term
- Comprehensive
- Lifestyle-focused
- Health-focused (HIV, STDs, TB)
- Therapeutic communities
- Cognitive, pro-social training
- Medication may be important
- Recovery requires aftercare



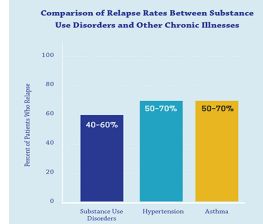
Every \$1 spent in treatment costs provides up to \$7 in taxpayer benefits. When savings related to health care are included, total savings can exceed costs by a ratio of 12:1. Etter et al., 2006

### Addiction Treatment Works

- Effective methamphetamine addiction treatment includes
  - **Matrix Model**  
An outpatient "protocol" incorporates a variety of evidence-based treatment elements: Cognitive behavioral therapies, relapse prevention, positive reinforcement, motivational interviewing. <https://store.samhsa.gov/system/files/ima13-4152.pdf>
  - **Contingency Management**  
Community based treatment addresses lifestyle changes and integrates an incentive program in which clients can earn vouchers exchangeable for retail items when remaining abstinent. Ling et al, 2006; Prendergast et al, 2006; <http://adclearinghouse.org/downloads/tip-33-treatment-for-stimulant-use-disorders-61.pdf>

### Relapse is common

Relapse rates for drug use are similar to rates for other chronic medical illnesses. If people stop following their medical treatment plan, they are likely to relapse.



Relapse rates for people treated for substance use disorders are compared with those for people treated for high blood pressure and asthma. Relapse is common and similar across these illnesses. Relapse serves as a sign for resumed, modified, or new treatment.

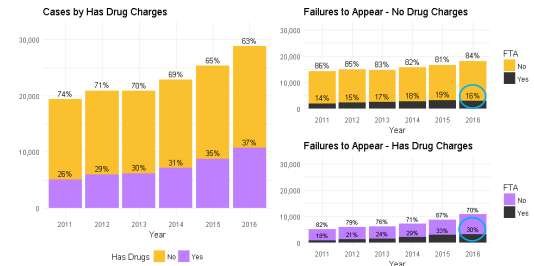
Source: JAMA, 284:1689-1695, 2000; NIDA at <https://www.drugabuse.gov/publications/drugs-brains-behavior-science/addiction/treatment-recovery>.

### Relapse is common

- More than half of patients in addiction programs require multiple episodes of treatment over several years
  - Multiple longitudinal studies have shown that, on average, people reach sustained abstinence only after **three to four episodes of different kinds of treatment** over a number of years (see Dennis and Scott, 2007)
  - Outcomes for drug abusing offenders in the community can be improved by monitoring drug use and by encouraging continued participation in treatment (NIDA)
- Personality, cognitive, and other serious mental disorders can be difficult to treat and may disrupt drug treatment
  - **50% to 80% of people in the criminal justice system have a Traumatic Brain Injury. In the general public, that number is 6%.** <https://www.du.edu/doi/presentations/index.html>

### Drug offenders have higher failure rates: FTA

Failures to Appear for Felony Cases, by Has Drug Charges, 2011-2016



Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICJMS) via the Colorado Justice Analytics Support System (CJAS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals. Excludes Denver County Court cases.

### Drug offenders have higher failure rates: Probation supervision

In 2017, 34% of district court cases sentenced to probation/deferred judgement were revoked (note that many of these cases are reinstated)

- 46% of WOMEN with drugs as most serious charge were revoked
- 43% of MEN with drugs as most serious charge were revoked

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICJMS) via the Colorado Justice Analytics Support System (CJAS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals. These data are from DCJ's 2018 CLEAR Act report.

### Relapse indicates that treatment needs to be reinstated or adjusted

- Criminal justice clients must be evaluated for dangerousness and threatening behaviors that must be contained

.....but drug treatment has been found to reduce both drug use and criminal behavior.

National Institute on Drug Abuse. (2010). Drugs, Brains, Behavior: The Science of Addiction.



### Addiction and trauma Adverse Childhood Experiences\*

The incidence of trauma history among addicts is so high that we assume anyone coming in for addiction treatment has experienced some sort of trauma.

--Jeff Burt, clinical director for Aspenridge Recovery Sept 13, 2018, Hour Utah

- Abuse
  - Emotional abuse
  - Physical abuse
  - Sexual abuse
- Household Challenges
  - Mother treated violently
  - Household substance abuse
  - Mental illness in household
  - Parental separation or divorce
  - Incarcerated parent
- Neglect
  - Emotional neglect
  - Physical neglect

- Those who score high are five times more likely to become alcoholics and 46x more likely to inject drugs. Miller et al., 2011
- For every increase in the ACE score, the risk of suicide attempts increases by about 60%. Dubé et al., 2001

\*Adverse childhood experiences (ACEs) are traumatic events occurring before age 18.  
[https://www.cdc.gov/nchs/data/aces/aces\\_definitions.html](https://www.cdc.gov/nchs/data/aces/aces_definitions.html)

### Trauma symptoms can interfere with treatment

- Persistent re-experiencing of trauma-related events
- Depression
- Heightened states of arousal
- Inability to concentrate
- Sleep disturbances including nightmares, trouble falling asleep, and frequent awakenings
- Difficulty managing anxiety
- Feelings of overwhelming emotion and terror
- Feelings of being out-of-control and incompetent, and isolation and profound loneliness

Morgan, P.J. (2006). Sleep-dependent procedural learning and rigidity in chronic cocaine users: Evidence for acute insomnia. *Drug and Alcohol Dependence*, 83(1), 238-249.  
Center for Substance Abuse Treatment. (2005). Substance Abuse Treatment: Addressing the Specific Needs of Women. Treatment Improvement Paper (TIP) Series. (90-1634). Rockville, MD: Substance Abuse and Mental Health Services Administration.

### Trauma symptoms can interfere with treatment

An individual's inability to concentrate, lack of sleep, trauma history, and exceptional stress suggest the need for professionals to do the following:

- Repeat verbally and write down information and instructions for offenders
- Speak slowly and carefully
- Help set priorities
- Break tasks into small sequences
- Provide positive and reassuring support for the person who may have a variety of very difficult physical and psychological conditions
  - Create a sense of safety
  - Increase coping strategies
  - Provide encouragement

Morgan, P.J. (2006). Sleep-dependent procedural learning and rigidity in chronic cocaine users: Evidence for acute insomnia. *Drug and Alcohol Dependence*, 83(1), 238-249.  
Center for Substance Abuse Treatment. (2005). Substance Abuse Treatment: Addressing the Specific Needs of Women. Treatment Improvement Paper (TIP) Series. (90-1634). Rockville, MD: Substance Abuse and Mental Health Services Administration.

### So how can we do things differently?

#### Are we screening for trauma?

Professionals working directly with offenders should routinely inquire about stress, sleep, anxiety, and concentration levels to better assess immediate risk for relapse and to provide appropriate support and additional services when necessary.

Communicating an optimistic expectation that change will occur will contribute to a positive treatment outcome.

Martínez, Director of Medical and Clinical Services, Department of Alcohol & Drug Services, Addiction Medicine Division, Santa Clara County Health & Hospital System, reviewing the literature in an editorial in the San Jose Mercury News, December 23, 2008.  
Avey, T.P. & Lambert, M.J. (2005). The empirical case for the Common Factors in Therapy: Quantitative Findings. In Hubble, M. A., Sautter, R. L., & Miller, S. D. (Eds.), *The Heart and Soul of Change: What works in therapy*. pp. 53-55 Washington, DC: American Psychological Association.

### So how can we do things differently?

#### From the Surgeon General's Report on Alcohol, Drugs and Health (2016)

Federal, state local and tribal governments should provide leadership, guidance, and vision in supporting a science-based approach to addressing substance use-related health issues.

- Improve public education and awareness;
- Conduct research and evaluation;
- Monitor public health trends;
- Provide incentives, funding, and assistance to promote the implementation of effective prevention, treatment, and recovery practices, policies, and programs;
- Address legislative and regulatory barriers;
- Improve coordination between health care, criminal justice, and social service organizations; and
- Foster collaborative initiatives with the private sector.

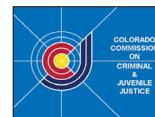
### So how can we do things differently?

- Should we implement Family Impact Statements in presentence investigations?
- Is it routine for criminal/juvenile justice professionals to receive training in the science of addiction and treatment?
- Are there any adult diversion programs that focus on drug possession cases?
- How are we handling treatment failures by defendants who are under supervision in the community?
- Given that treatment is a long and complex process, can revocation practices be examined to ensure that prison is reserved for those who are dangerous?
- Are our professional organizations strategically advocating for an increase in behavioral health treatment? (*Senate Bill 19-154, Psychiatric Technicians*)

### Summary

- Prison capacity is full and projected to increase significantly
  - Children are greatly negatively impacted by parental incarceration
- Drug possession driving filing increase, and to a lesser extent, felony assault
- Methamphetamine is primary drug, followed by heroin
- Treatment works
- Addicts more likely to fail criminal justice placements
- Addicts more likely to have trauma triggers; also TBI
- Professional training regarding the science of addiction must be translated into practice
- Might we do things differently?
- Access to treatment, including MAT, must be greatly expanded in Colorado

### Trends and Issues in Criminal Justice



Thank you for your time and attention

# Appendix I: Behavioral Health Efforts

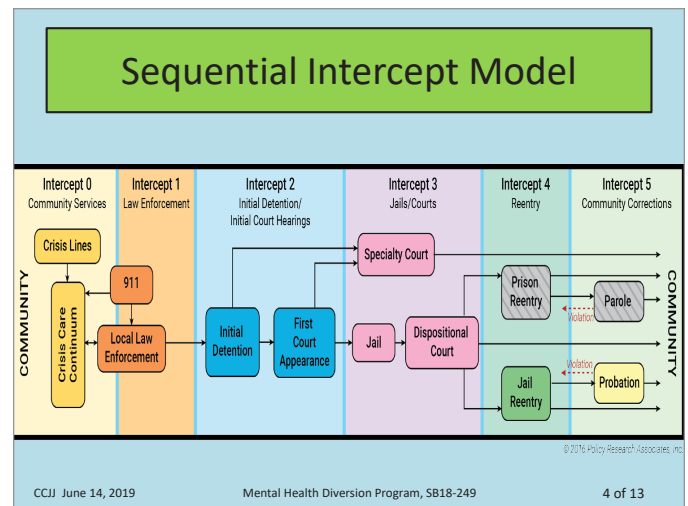
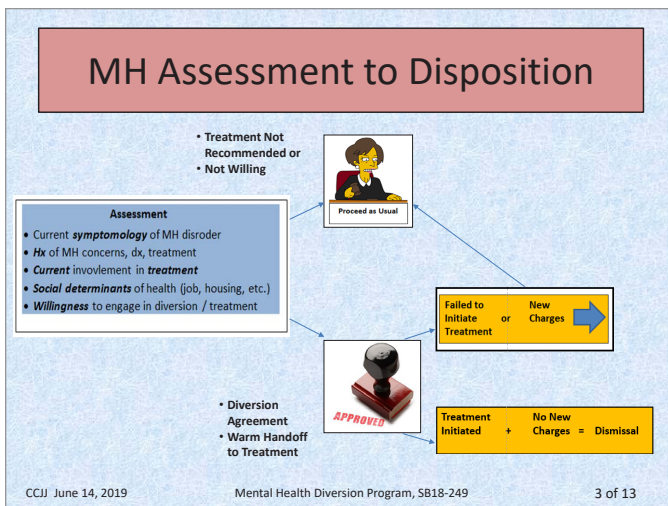
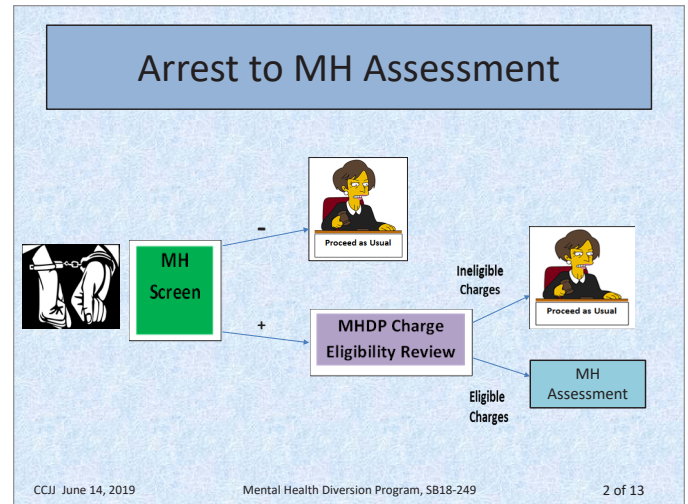
## Part 1 of 3 – Mental Health Diversion Program

### Mental Health Diversion Program

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 Criminal Justice Programs Unit  
 Office of the State Court Administrator  
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 720.625.5963

June 14, 2019

Presented to the Colorado Commission on Criminal and Juvenile Justice



### The Pilots

Judicial District	Max Capacity	Eligible Offenses	Filing Status	Retained Authority to Charge?
6 <sup>th</sup> JD Archuleta, La Plata, San Juan	30	<ul style="list-style-type: none"> <li>Petty</li> <li>Traffic</li> <li>Misdemeanor</li> <li>F4-F6, DF3, DF4</li> </ul>	Pre-plea	Yes
8 <sup>th</sup> JD Jackson and Larimer	50	<ul style="list-style-type: none"> <li>Petty</li> <li>Misdemeanors</li> <li>F5, F6, DF4</li> </ul>	Pre-plea	Yes
16 <sup>th</sup> JD Bent, Crowley, Otero	75	<ul style="list-style-type: none"> <li>Jailable traffic</li> <li>Misdemeanors</li> <li>F4-F6, DF4</li> </ul>	Pre-plea	Yes
20 <sup>th</sup> JD Boulder	150	<ul style="list-style-type: none"> <li>Petty</li> <li>Traffic</li> <li>Misdemeanors (except obstruction/resisting)</li> </ul>	Pre-file	No

Statutorily Excluded Offenses: All VRA; All F1-F3; All DF1-DF2

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### Timeline of Key Actions - 2018

Sept., 2018	MHDP Coordinator begins
Sept. 11	Announcement of pilot sites
Sept. 21	10 <sup>th</sup> JD withdraws as pilot
Oct. 3	8 <sup>th</sup> JD agrees to serve as pilot
Oct. – Nov.	Requests for Proposal (MH providers)
Nov. 26	Pilot Site Design Plan deadline
Dec. 14	Fund allocation announcement
February	1 <sup>st</sup> vendor contract final; pilot launch (16 <sup>th</sup> )
April 30	First quarterly reports due
May 2	Last* vendor contract signed (8th)
July 1	Final pilot anticipated launch (20th)

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- ### Implementation Delays
- Change in pilot sites
  - Vendor acquisition
  - Vendor contracts and interagency agreements
  - New program overload / jail readiness
  - Hiring
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### Implementation Status

(as of June 6, 2019)

Judicial District	Launch Date	Active Participants	Under Consideration	Successful Completions	Terminations
6 <sup>th</sup>	Feb. 6 (May 15)	2	1	1	0
8 <sup>th</sup>	June 3	0	1	0	0
16 <sup>th</sup>	March	4	16	0	2
20 <sup>th</sup>	July 1	0	0	0	0

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- ### Questions and Challenges
- Grounds for terminating diversion
  - Restitution
  - MH only, or co-occurring?
  - Out of custody (on bond/summons)
    - Lack of follow up / contact information
  - BJMHS and MH severity
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- ### Updates
- SB 19-211
    - Clarify and extend duration (6/30/22)
    - Increase funding (+\$440K FY19-20)
    - Require annual reports with evaluation in 2021 report
  - Advisory Committee
  - MHDP Convening
  - Program Evaluation
  - Provider training – Risk Needs Responsivity
  - Website and Tool Kit  
<https://www.courts.state.co.us/Administration/Unit.cfm?Unit=mhdiver>
  - Pilot Expansion?
- CCJJ June 14, 2019      Mental Health Diversion Program, SB18-249      10 of 13

Thank you! Questions?

*Kara Martin*

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# Appendix I: Behavioral Health Efforts

## Part 2 of 3 – CCJJ Update: JBBS Mental Health Expansion S.B. 18-250

**COLORADO**  
CCJJ Update: JBBS  
Mental Health Expansion  
S.B. 18-250

June 2019  
Presented by Kerry Krause, Program Manager JBBS  
to the Colorado Commission on Criminal and Juvenile Justice

**COLORADO**  
Office of Behavioral Health  
Department of Human Services

1

### JAIL BASED BEHAVIORAL SERVICES (JBBS) Review

- Program Began in 10/1/2011
- Funded through the correctional treatment board and SB 2013-215 (marijuana tax fund)
- Partnership between The State, County Sheriff's and local treatment providers to serve those in jails with substance use disorders and co-occurring SUD and Mental Health disorders
- Services: Screening, Assessment, SUD treatment, transitional case management care, recovery support funding, medication assisted treatment

CCJJ, June 14, 2019 Jail-Based Behavioral Services, SB18-250

2

### PROGRAM HISTORY

10•1•11	5•1•12	5•1•14
Budget \$1.4 million	Budget \$2.6 million	Budget \$5.3 million
First JBBS programs implemented in 24 counties.	6 additional counties- reaching 90% jail population in Colorado.	Expansion to 43 counties in Colorado.
7•1•17	6•30•18	7•1•19
Budget \$5.6 million	Budget \$11 million	Budget \$18 million
Programs in 45 counties.	SB 18-250, mental health only diagnosis able to be served.	Aim to have programs in all 50 county jails. Expanded population: pre-sentenced pilots, competency enhancement, jail MAT

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3

### JBBS PROGRAM GOALS

- Reduction in critical incidents at jails
- Successful linkage to community based services
- Decreased recidivism through better identification and treatment of behavioral health needs
- Approach should result in shorter jail sentences

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4

### MENTAL HEALTH EXPANSION SB 18 -250

## FUNDING WILL ALLOW JAILS WITH MINIMAL BEHAVIORAL HEALTH RESOURCES TO:

- + Hire adequate staff to complete universal behavioral health screenings
- + Prescribe psychiatric medications
- + Provide mental health counseling, substance abuse disorder treatment
- + Transitional care coordination
- + Train jail staff on behavioral health disorders and best practices in working with the CJ population that has mental health, substance use, and co-occurring disorders

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Jail-Based Behavioral Services, SB18-250
5

### SOW Highlights Mental Health Expansion SB 18 -250

*Funding will allow jails with minimal behavioral health resources:*

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6

### Create a JBBS Program Coordination Group

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7

### JBBS Program Map

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8

### Data Collection

#### JBBS Database

- Individual Client Level Data
- Screening, client demographics, tx services, transition tracking, psychiatric medications, competency restoration status

#### JBBS Quarterly Report

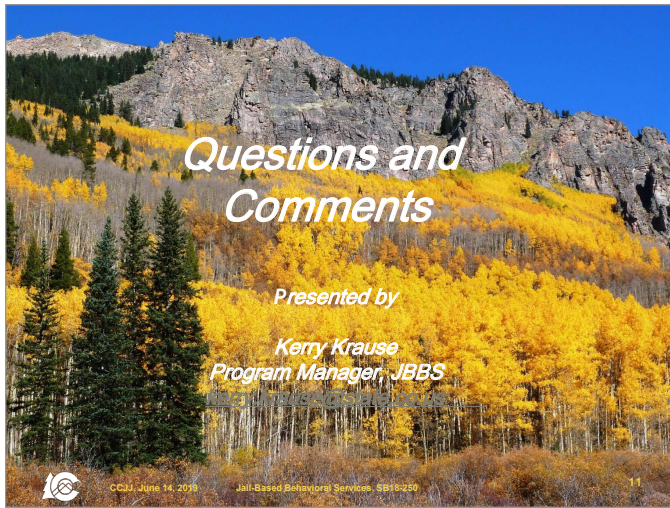
- Aggregate Jail Data
- Number of bookings, Number of Screens completed, Number of Critical Jail Incidents

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9

### Future Connection of Jail Resources

- Medication Consistency**
  - SB 17-019
  - Standardized Psychotropic Medication Formulary across criminal justice systems.
  - Health Information Exchange Strategy Development
- Competency Enhancement Services**
  - SB 19-223
  - JBBS programs will assist in the provision of coordinated services for individuals in jail custody who may require competency restoration services.
- Jail MAT Services**
  - SB 19-008
  - Require jails that receive funding through JBBS to have a policy in place on or before January 1, 2020
- Pre-sentenced Coordinator Pilot**
  - 1-2 Case Management level positions to coordinate services for those with shorter lengths of stay

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10







# Appendix I: Behavioral Health Efforts

## Part 3 of 3 – Bridges Program: Connecting Colorado’s Criminal Justice and Mental Health Systems



Senate Bill 18-251

### The vision

All Coloradans are provided a fair chance of living a healthy and productive life.

### The mission

To promote positive outcomes for Coloradans living with mental health conditions who encounter criminal justice involvement by fostering collaboration between both systems.

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Senate Bill 18-251

Local professionals will serve as Bridges Program Court Liaisons in each Colorado Judicial District and will *facilitate communication and collaboration* between the criminal justice and mental health systems.

#### Promoting Outcomes

Promote positive outcomes for Coloradans living with mental health conditions who encounter the criminal justice system.

#### Sharing Information

Keep judges, district attorneys and defense attorneys informed about available community-based mental health services for defendants, including those in need of competency services.

#### Connecting to Services

Identify needs and connect individuals to appropriate mental health and other support services.

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### Competency

### The need

- Inmates may wait months for services. Without treatment, many inmates' mental health declines, making them potentially dangerous to themselves or others
- CMHIP is required, by court order, to reduce average wait times for restoration services to 24 days or less\*. However, in the first five months of 2018, the average wait time was 84 days. Some individuals have waited as long as 149 days. (\*These requirements will change with the new consent decree.)
- CDHS estimates that at least 25% of patients receiving inpatient restoration services could be served in the community, reducing wait times for inpatient beds at CMHIP and potentially reducing repeat referrals.

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### Mental Health

### The need

- The majority of Coloradans with mental illness do not receive services, with many receiving referrals after entering the justice system.
- Colorado prisons provide treatment to 4x as many people as all public psychiatric hospitals.
- People with serious mental illness are twice as likely to be arrested again within a year of leaving prison, compared to those without mental health needs.
- Arapahoe County Detention Center reports that inmates with mental health conditions cost 44% more to incarcerate and are held in custody three times longer than other inmates.

CCJJ June 14, 2019 CO SCAO, Bridges Program, SB18-251 5 of 16

Senate Bill 18-251

To promote *positive outcomes* for Coloradans living with mental health conditions who encounter criminal justice involvement by fostering collaboration between both systems.

#### Custody to Community

Support individuals who are determined not to be a risk to community safety toward successful engagement in community-based services.

#### Stop "Revolving Door"

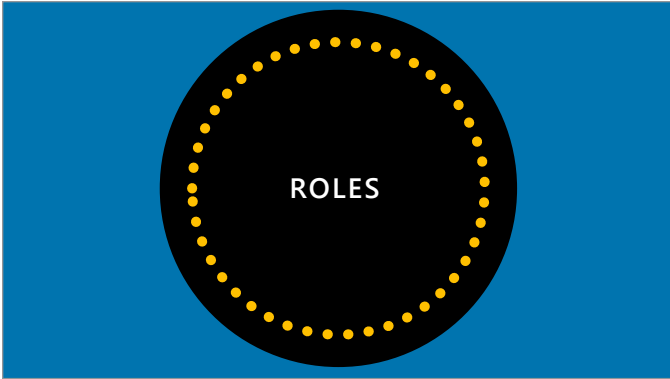
Address deeper mental health needs and related social considerations of health toward long-term stability, reducing repeated involvement in the criminal justice system.

#### Timely & Appropriate

Identify meaningful responses to a participant's mental health, competency, and other service needs and provide advocacy to ensure services are timely, appropriate, and accessible.

AND...

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**ONGOING COLLABORATION**

- JUDICIAL DISTRICTS**  
identify needs of stakeholders and individualize Bridges Program to local community; support connections
- COMMUNITY AGENCIES**  
provide and train professionals who identify participant need and facilitate communication and collaboration between systems; ensure quality of service
- STATE COURT ADMINISTRATOR'S OFFICE**  
develop statewide program model to support local efforts toward best practices and alignment with legislative intent

CCJJ June 14, 2019 CO SCAO, Bridges Program, SB18-251 8 of 16

**COURT LIAISONS**

- PROMOTING POSITIVE OUTCOMES**
  - Most appropriate services
  - Available funding mechanisms
  - Timely delivery of services
- SHARING INFORMATION**
  - Informing judicial decision making
  - Informing parties of process
  - Monitoring attendance
- CONNECTING TO SERVICES**
  - Rapport, rapport, rapport
  - Needs assessment
  - Engagement

**FORENSIC ADVOCACY**

- Advocating for services
- Maintaining judicial neutrality
- Avoiding unintended negative consequences

Court Liaisons are not...

- Clinicians
- Client advocates

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**Scope of Work**

"There is something intensely dramatic and fanciful in the appeal of the bridge to all classes of people, under all conditions of nature. All traffic converges and concentrates on the bridges. They become a daily necessity and a familiar benefactor, giving convenient passage over some natural obstruction."

—Walter Kidney, 1999

CCJJ June 14, 2019 CO SCAO, Bridges Program, SB18-251 10 of 16

**Focus: Service Delivery**

- competency
- statewide templates & protocols
- court liaison orientations
- local team engagement & needs identification
- identification of service resources
- identification of funding mechanisms
- data tracking according to legislation

CCJJ June 14, 2019 CO SCAO, Bridges Program, SB18-251 11 of 16

**Focus: Program Planning**

- additional mental health conditions
- local team engagement & individualization of program
- client voice
- court liaison communities of practice
- statewide steering committee & strategic planning
- pilots for target populations (veterans, TBI, IDD, juvenile, rural, DMC/LGBTQ)
- additional outcomes & measures

CCJJ June 14, 2019 CO SCAO, Bridges Program, SB18-251 12 of 16

**Contracting & Hiring**

**Court Liaisons**

- All 22 Judicial Districts have contracts in place for provision of Court Liaisons.
  - Majority Community Mental Health Centers
  - Three private non-profit behavioral health organizations
  - Two pre-trial services providers
  - One public health department
- 27 of 29 Court Liaisons have been hired in 21 districts.

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**Workflow**

**Court Orders**

All Bridges Program Participation will be through Court Order

- Establishes Accountability to Judge
- Puts Legal Protections in Place
  - Competency Referrals
  - General Mental Health Referrals
- Controls Flow & Volume of General Mental Health Referrals
- Adult & Juvenile Orders
- Competency & General Mental Health Orders

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**Judicial Districts**

**Colorado**  
A Culture of  
Collaboration

**Community Partners**

**State Court Administrator's Office**

For more information, contact:  
Jennifer Turner, Bridges Program, Statewide Coordinator  
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CCJJ June 14, 2019 CO SCAO Bridges Program 5518-213





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