District Court, Weld County, State of Colorado Court Address: 901 9th Avenue, Greeley, CO 80631 Mailing Address: P.O. Box 2038, Greeley, CO 80632-2038	DATE FILED: March 25, 2022 8:52 AM
ADMINISTRATIVE ORDER NO. 2022-05	**▲COURT USE ONLY▲** Case Number: **2022 CV 01** Division 1

ORDER REGARDING 19TH JUDICIAL DISTRICT PROCEDURES FOR BOND HEARINGS UNDER C.R.S. §16-4-102(2)(a) FOR PERSONS ARRESTED IN ANOTHER COUNTY ON A WARRANT ISSUED BY A JUDICIAL OFFICER IN THE 19TH JUDICIAL DISTRICT

The purpose of this administrative order is to establish consistent and uniform procedures in the 19th Judicial District for scheduling bond hearings within forty-eight hours of arrest for adults arrested in another county on a bench or arrest warrant issued by a judge or magistrate of the 19th Judicial District (Weld County).

This order sets forth the 19th Judicial District's interpretation of the criteria and requirements of C.R.S. § 16-4-102(2), frequently referred to as the "forty-eight-hour bill," H.B. 21-1280. This administrative order does not extend to the 19th Judicial District's existing procedures for advising all persons arrested and detained in the Weld County Jail—which includes arrests with or without a warrant for local charges, and out-of-county warrants—of their rights pursuant to Crim.P. 5. The judicial officers of the 19th Judicial District will continue to advise all arrested persons detained in the Weld County Jail without unnecessary delay under Crim.P. 5.

Persons appearing before a 19th Judicial District judicial officer for an out-of-county warrant Rule 5 advisement of rights will not have bail set or modified on the out-of-county warrant by our judicial officers, because the Weld County District Attorney is not authorized to appear on behalf of the People for a case in another

county, absent appointment as a special prosecutor in that other county. C.R.S. §20-1-102(1)(a) ("every district attorney shall appear in behalf of the state and the several counties of his or her district … in all indictments, actions, and proceedings which may be pending in the district court in any county within his district wherein the state or the people thereof or any county of his district may be a party."). The district attorney from the county where the out-of-county warrant was issued has the right to notification and the right to appear for initial bail setting pursuant to C.R.S. §16-4-104(6), and the initial bond setting will occur before the court in the county that issued the warrant through procedures established in that county.

This order also does not apply to juveniles detained on a warrant issued by a court in the 19th Judicial District, as juvenile detention procedures already exist in the 19th Judicial District.

I have conferred with the judicial officers of the 19th Judicial District to seek their advice and counsel prior to issuing this administrative order.

The Equal Protection Clause of the Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction equal protection of the laws." U.S. Const. amend. XIV, §1. Although the Colorado Constitution does not contain an express equal protection clause, the Colorado Supreme Court has interpreted the Colorado Constitution to contain similar guarantees. Colo. Const. art. II, §25; *Dean v. People,* 366 P.3d 595, 596 (Colo. 2016). Thus, "equal protection of the laws assures the like treatment of all persons who are similarly situated." *Id.*

It is important for the judicial officers in the 19th Judicial District to apply a consistent approach to scheduling a hearing for persons detained in another county on a Weld County warrant and who are eligible for a bond hearing within forty-eight hours of arrest, to ensure similarly situated persons are provided equal protection of the law. Equally important is the guidance provided to sheriffs throughout Colorado regarding the arrestees held in their jails as to which persons being detained on a Weld County warrant will be appearing before a judge in the 19th Judicial District within forty-eight hours of arrest.

There may be different approaches taken by other judicial districts, and the Weld County Sheriff's Office should understand that additional or different procedures may be required for persons detained in the Weld County Jail on a warrant issued by another county to appear by video before a court in another judicial district.

In 2021, the Colorado General Assembly passed HB 21-1280, which amended Colorado's statute concerning the right to bail before conviction, C.R.S. §16-4-102. Included as part of the HB 21-1280 amendments is a provision requiring arresting agencies to bring in-custody arrestees before a court for bond setting as soon as practicable, but no later than forty-eight hours after the arrestee arrives at a jail or a holding facility. As related to the provisions of this administrative order, the relevant portions of C.R.S. §§16-4-102(1), -(2)(a) are:

> (1) Any person who is 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 has 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 is not a prerequisite to bail that a criminal charge of any kind has been filed.
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> (2)(a)(I) The arresting jurisdiction shall bring an in-custody arrestee before a court for bond setting as soon as practicable, but no later than forty-eight hours after an arrestee arrives at a jail or holding facility. A judge, magistrate, or bond hearing officer shall hold a hearing with an in-custody arrestee at which the court shall enter an individualized bond order as soon as practicable, but no later than forty-eight hours after an arrestee arrives at a jail or holding facility. Notwithstanding the requirement for bond setting within forty-eight hours, it is not a violation of this section if a bond hearing is not held within forty-eight hours when the delay is caused by an emergency that requires the court to close or circumstances in which the defendant refuses to attend court, is unable to attend court due to a

> debilitating physical ailment, or is unable to proceed due to drug or alcohol use or mental illness. Use of audiovisual conferencing technology is permissible to expedite bond setting hearings, including prior to extradition of the defendant from one county to another in the state of Colorado. When high-speed internet access is unavailable, making audiovisual conferencing impossible, the court may conduct the hearing telephonically.
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> (II) This subsection (2)(a) applies only to the initial bond setting by a judge.
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> (III) This subsection (2)(a) applies to an arrestee who was arrested on or after April 1, 2022.

There is a split between the chief judges as to the interpretation of C.R.S. §16-4-102(2)(a). Certain chief judges interpret this subsection as requiring an individualized bond hearing for all bail-eligible arrestees if that person has not previously appeared before the court, even when the person is detained on a warrant where bond has been set on the warrant by a judge. Other chief judges interpret this statute as requiring persons who are being held without bond, and who are otherwise constitutionally or statutorily bail-eligible, to appear before a court within forty-eight hours of arrest for bond setting; however, persons arrested on a warrant where bond has been set on the warrant by a judge are not required to appear before a court within forty-eight hours of arrest for a bond setting, as that person has already had an "initial bond setting by a judge," as contemplated by C.R.S. §16-4-102(2)(a)(II). The 19th Judicial District follows and applies the latter interpretation of this statute, pending further interpretation and direction from an appellate court.

For purposes of this order, the term "judge" refers to all judges and magistrates of the 19th Judicial District, as well as judges in the senior judge program assigned to perform duties in the 19th Judicial District. All magistrates employed in the 19th Judicial District are authorized to act as both a district court magistrate under Colorado Rules for Magistrates ("CRM") 6 and a county court magistrate under CRM 8.

Pursuant to CRM Rule 5(c), a magistrate has "the power to issue bench warrants for the arrest of non-appearing parties, to set bond in connection therewith, and to conduct bond forfeiture proceedings." Under CRM 6(a), a district court magistrate is authorized to:

- Conduct initial proceedings, including advisement of rights, admission to bail, and imposition of conditions of release pending further proceedings. CRM(a)(1)(A);
- Conduct bond review hearings. CRM(a)(1)(C);
- Issue arrest and search warrants, including nontestimonial identification under Rule 41.1. CRM(a)(1)(H).

Absent specific constitutional or statutory delineated exceptions, "all persons shall be bailable by sufficient sureties pending disposition of charges." Colo. Const. article II, §1; *People v. Blagg*, 340 P.3d 1137, 1140 (Colo. 2015).

Understanding that the provisions of C.R.S. §16-4-102 apply only to bail before conviction, other provisions of law were considered when arriving at our interpretation that C.R.S. §16-4-102(2)(a) applies only to persons who are bail-eligible and for whom an initial bond has not already been set by a judge for that particular arrest.

Under Crim.P. 4(a)(2), when a warrant is requested in conjunction with the filing of a felony complaint, there must be a "sworn statement of facts establishing probable cause to believe that a criminal offense was committed, and the offense was committed by the person for whom the warrant is sought." If a person is properly summoned to appear on a felony complaint and that person fails to appear as commanded by the summons, "the court shall forthwith issue a warrant for the arrest of that person." Crim.P. 4(a)(5). Whether the warrant is issued at the initial filing of charges or when a person fails to appear on summons, a judge of a court of record must endorse "upon [the warrant] the amount of bail if the offense is bailable."

A warrant may also be sought by law enforcement prior to the filing of charges under Crim.P. 4.2, and if no bond is set on the warrant by a judge of a court of record when issuing the warrant and the person is otherwise bail eligible, the arrestee is required to be brought before a court for bail setting within forty-eight hours of arrest under C.R.S. §16-2-104(2)(a). Our courts issue no-bond warrants for charges involving domestic violence, sexual assault, and stalking, as the defendant must be advised by the court verbally of the protection order and the defendant must acknowledge the existence of the protection order in writing before the person can be released on bail. C.R.S. §18-1-1001(5). Bail, when the offense and/or person is bail eligible, is set on the warrant for other types of offenses.

For persons served with a summons or summons and complaint filed in the county court, the judge may issue a bench warrant if the person fails to appear in person or through counsel. Crim.P. 4.1(f). The judge in county court may also issue a warrant for a person's arrest who fails to appear in person or through counsel after being served with a penalty assessment, or if that person fails to pay the penalty assessment. *Id.*

The word "initial" is defined as "of or occurring at the very beginning," NEW WEBSTER'S DICTIONARY AND THESAURUS 498 (1992), and "that which begins or stands at the beginning," BLACK'S LAW DICTIONARY 704 (5th ed. 1979). Thus, our interpretation is that when the court sets bail when issuing an arrest or bench warrant—which occurs in conjunction with the court reviewing a probable cause affidavit or there is a failure to appear in court by the defendant who was properly served a summons to appear—the court has considered the existing circumstances of that specific case and set initial bail for the defendant's case, as contemplated by C.R.S. §16-4-102(2)(a)(II). This review by a judge involves a case-by-case factual determination and differs from the situation involving a person who is arrested without a warrant and bond is established at the jail through a generic bond schedule, where the amount of bail is based solely on the level of charge(s) and without prior review of that case by a judge.

Although, under our interpretation of C.R.S. §16-4-102(2)(a), persons arrested in another county on a Weld County bench warrant or arrest warrant where bond is set on the warrant by a judge is not entitled to a bond hearing within forty-eight hours of being arrested on that warrant, the person nevertheless has remedies to address bond modification by the court. If the person is held on a bond for which a monetary condition was imposed by the court, the detained person may file a motion after seven days from the setting of bond to request reconsideration of the monetary conditions of bond. C.R.S. §16-4-107(1). The detained person also has the right to file a motion to modify bond under C.R.S. §16-4-109(1), but the defendant must provide reasonable notice of the motion to modify bond to the district attorney. C.R.S. §16-4-109(2).

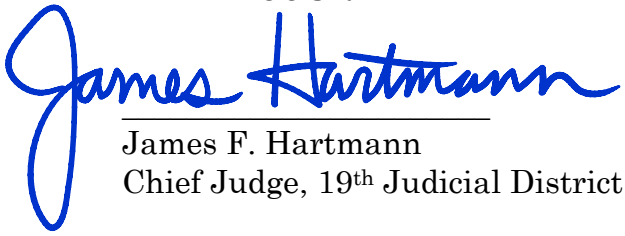
BASED ON THE FORGOING, IT IS ORDERED:

1. Adults detained in another county on a warrant issued by a judge in the 19th Judicial District (Weld County) where bail is set on that warrant, regardless of whether the failure to appear was at the first or subsequent appearance, are not required to appear within forty-eight hours of arrest before a Weld County court for another bond setting.
2. If the person is unable to post bail on the Weld County warrant and that person is not detained on any other holds in the county where the person is being detained, the Weld County Sheriff and the sheriff where the person is being held shall arrange for the transportation of the person from the other county to the Weld County Jail, pursuant to the provisions of Crim.P. 5(a)(3) (district court cases) or Crim.P. 5(c)(3) (county court cases).
3. The person being detained in another county on a Weld County warrant where bail has been set on the warrant may also file a writ with the Weld County court that issued the warrant, requesting an in-person or a video appearance before that court to address the warrant, a reconsideration of the monetary condition of bond, or request a bond modification hearing.

4. Persons held in another county on a Weld County arrest or bench warrant where no bond has been set on the warrant and that person is bail eligible, will appear before a Weld County court by video within forty-eight hours of arrest for bond setting and a Rule 5 advisement of rights. The schedule for weekday and weekend appearances has not been finalized and will be set forth in a separate document.

Dated: March 25, 2022.

BY THE COURT:



James F. Hartmann
Chief Judge, 19th Judicial District