



**CHIEF JUDGE ORDER 2022-07
STATE OF COLORADO
FIRST JUDICIAL DISTRICT**

**ORDER REGARDING 1st JUDICIAL DISTRICT PROCEDURES FOR
SCHEDULING 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 1st JUDICIAL
DISTRICT**

The purpose of this order is to establish consistent and uniform procedures in the 1st Judicial District for scheduling bond hearings within 48 hours of arrest for adults arrested in another county on a bench or arrest warrant issued by a judge of the 1st Judicial District. In particular, this order sets forth the 1st Judicial District's interpretation of the requirements of C.R.S. § 16-4-102(2), frequently referred to as the "48 Hour Bill," H.B. 21-1280. A summary of the procedures flowing from this interpretation is set forth in the final section of this order.

ANALYSIS OF C.R.S. §§ 16-4-102(1) AND (2)(a)

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. The amendment at issue requires arresting agencies to bring in-custody arrestees before a court for bond setting as soon as practicable, but no later than 48 hours after the arrestee arrives at a jail or a holding facility. The relevant portions of C.R.S. §§ 16-4-102(1) and (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.

(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.

(II) This subsection (2)(a) ***applies only to the initial bond setting by a judge.***

(III) This subsection (2)(a) applies to an arrestee who was arrested on or after April 1, 2022.

(emphasis added).

The chief judges and other officials have been working with stakeholders across the state to implement the provisions of this amendment. In doing so, the chief judges have respectfully disagreed as to the interpretation of C.R.S. § 16-4-102(2)(a). A minority of 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. On the other hand, a majority of chief judges interpret this subsection as requiring persons who are being held without bond, and who are otherwise

constitutionally or statutorily bail-eligible, to appear before a court within 48 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 48 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).

As explained in greater detail below, the 1st Judicial District adopts and applies the majority interpretation (pending further interpretation and direction from an appellate court). Specifically, persons held in another county on a 1st Judicial District arrest or bench warrant where no bond has been set on the warrant and that person is bail eligible, will appear before a 1st Judicial District court by video within 48 hours of arrest for bond setting and a Rule 5 advisement of rights. The court has conferred with and sought the advice of the judges of the 1st Judicial District where possible prior to issuing this order. For purposes of this order, the term “judge” refers to all judges and magistrates of the 1st Judicial District and judges in the senior judge program assigned to perform duties in the 1st Judicial District.

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). Further, the provisions of C.R.S. § 16-4-102 apply only to bail before conviction. As such, the court considered other authorities to arrive at the 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.

First, 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.”

Second, 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 48 hours of arrest under C.R.S. § 16-2-104(2)(a). Judges 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.

Third, for persons served with a summons or summons and complaint, 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 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.*

With these principles in mind, the court turns to the plain language of subsection (2)(a)(II), which states that the 48 hour requirement "***applies only to the initial bond setting by a judge.***" Stated differently, a bond hearing is not required if the judge has set the bond through the means mentioned above. This plain language and practical interpretation is supported by the meaning of the word "initial." "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, 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.

Under both interpretations, the person arrested 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).

The court believes that it is important for the judges in the 1st Judicial District to apply a consistent approach to scheduling a bond hearing for persons detained in another county on a 1st Judicial District warrant and who are eligible for a bond hearing within 48 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 1st Judicial District warrant will be appearing before a judge in the 1st Judicial District within 48 hours of arrest.

Finally, the judges of the 1st Judicial District will continue to advise all arrested persons detained in the Jefferson and/or Gilpin County jails without unnecessary delay under Crim. P. 5. Persons appearing before a 1st 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 judges because the 1st Judicial 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.

SUMMARY OF PROCEDURES

Given this interpretation, the following is a brief summary of the procedures that will be followed in the 1st Judicial District for C.R.S. §§ 16-4-102(1) and (2)(a):

1. Persons held in another county on a 1st Judicial District arrest or bench warrant where no bond has been set on the warrant and that person is bail eligible, will appear before a 1st Judicial District court by video within 48 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.
2. Adults detained in another county on a warrant issued by a judge in the 1st Judicial District 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 48 hours of arrest before a 1st Judicial District court for another bond setting.
3. If the person is unable to post bail on the 1st Judicial District warrant and that person is not detained on any other holds in the county where the person is being detained, the Jefferson and/or Gilpin County Sheriffs and the sheriff where the person is being held shall arrange for the transportation of the person from the other county to the Jefferson and/or Gilpin County Jail, pursuant to the provisions of Crim. P. 5.
4. The person being detained in another county on a 1st Judicial District warrant where bail has been set on the warrant may also file a writ with the 1st Judicial District 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.
5. This order does not apply to juveniles detained on a warrant issued by a court in the 1st Judicial District, as juvenile detention procedures already exist.

6. This order does not change the 1st Judicial District's existing procedures for advising all persons arrested and detained in the Jefferson and/or Gilpin County jails—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 judges of the 1st Judicial District will continue to advise all arrested persons detained in the Jefferson and/or Gilpin County jails without unnecessary delay under Crim. P. 5.

March 30, 2022.



Jeffrey R. Pilkington, Chief Judge
First Judicial District