



CHIEF JUDGE ORDER 2014-3  
STATE OF COLORADO  
FIRST JUDICIAL DISTRICT

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IN THE MATTER OF BAIL IN THE 1<sup>ST</sup> JUDICIAL DISTRICT

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**ORDER**

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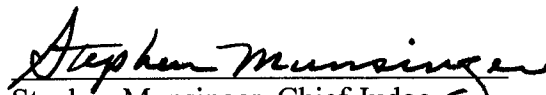
WHEREAS, the District and County Court Judges for the First Judicial District are committed to increasing public safety and the integrity of the judicial system through increased pretrial supervision of offenders on bail bonds, maintaining high court appearance rates, as well as to improving the law, the legal system, and the administration of justice; and

WHEREAS, the Jefferson County Criminal Justice Strategic Planning Committee voted overwhelmingly in 2011 to pursue improvements to the administration of bail believed to be consistent with legal and evidence-based practices identified through a three and one-half year period of study of the criminal pretrial process; and

WHEREAS, the Colorado Legislature recently amended Title 16, which legislation necessitates modification to Chief Judge Order 2011-02;

NOW THEREFORE IT IS ORDERED THAT: Effective July 1, 2014, the Process and Schedule for Setting Bonds attached to Chief Judge Order 2011-02 is hereby replaced by the "Amended Process and Schedule for the Setting of Bail Bonds," attached to this Order. The General Instructions for Advisements will remain as adopted pursuant to Chief Judge Order 2011-02.

Done at Golden, Colorado this 3<sup>rd</sup> day of October 2014.

  
Stephen Munsinger, Chief Judge

# **AMENDED PROCESS AND SCHEDULE FOR THE SETTING OF BAIL BONDS**

**State of Colorado, First Judicial District, Jefferson County**  
**Effective for criminal cases advised in the Jefferson County Combined Court**

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## **Applicability**

The following process and schedule applies to each defendant who:

- is booked into the Jefferson County Detention Facility because he or she is charged with a new crime or he or she has a no-bond-hold warrant for a new crime, or
- is in custody and appearing for the first time after an indictment, information, or complaint has been filed and the type of bond and conditions of release have been previously fixed.

## **Bond Commissioner's Authorization to Release Defendants from Custody**

The bond commissioner authority to release a defendant from custody on a bail bond is terminated.

## **Required Appearance before a Judicial Officer**

A defendant shall appear before a judicial officer for the setting of a bail bond prior to his or her release from custody.

Pursuant to § 16-4-103 (1) (c), C.R.S., because of the danger posed to the person and to others, a person who is arrested for an offense under § 42-4-1301 (1) or (2) (a), C.R.S., may not attend a bail hearing until such person is no longer intoxicated or under the influence of drugs. Such person shall be held in custody until such person may safely attend the bail hearing.

## **Defendant's Information for the Court**

Consistent with § 16-4-106, C.R.S., Jefferson County Pretrial Services will: (1) assess the defendant's risk of danger to the community and risk of failure to appear for court; (2) provide the judicial officer with information relevant to the bail bond criteria listed below (including which defendant-provided information was verified); (3) inform the judicial officer whether the defendant is eligible for a personal recognizance bond or eligible for a personal recognizance bond only with the consent of the District Attorney, and (4) provide the judicial officer with recommendations for which conditions of bail bond, possibly including pretrial supervision, would most likely reduce the defendant's risk of danger to the community and of failure to appear at court hearings. Additionally, Pretrial Services will not interview a defendant for the pretrial assessment until that defendant is no longer intoxicated or under the influence of drugs.

Attorneys from the District Attorney's Office or the Public Defender's Office, private defense counsel, a victim, victim services, the defendant, or any other person at the

judicial officer's discretion, may also present the court with information relevant to the defendant's risk of danger to the community or for failure to appear for court.

### **Criteria for Setting and Selection of Type of Bond**

Pursuant to § 16-4-103, C.R.S., the judicial officer shall consider the following when setting the type of bail bond and the conditions of bail bond (unless the person is not eligible for bond pursuant to § 16-4-101):

- The type of bond and conditions of release sufficient to reasonably ensure the appearance of the person and to protect the safety of the person or the community;
- The individual characteristics of each person, including the person's financial condition, and
- The classification of the person's risk based upon the empirically developed risk assessment instrument

In determining the type of bond and conditions of release, the court shall:

- Presume that all persons are eligible for release on bond with the appropriate and least-restrictive conditions (unless subject to preventive detention under § 16-4-101 and the Colorado Constitution);
- Consider all methods of bond and conditions of release to avoid unnecessary pretrial incarceration;
- Consider all levels of community-based supervision as conditions of pretrial release;

The court may also consider the follow criteria as appropriate and relevant in determining the type of bond and conditions of release:

- The person's employment status and history;
- The nature and extent of the person's family relationships;
- The person's past and present residences;
- The person's character and reputation;
- Identity of other persons who agree to assist the person in attending court at the proper time;
- The likely sentence, considering the nature of the offense presently charged;
- The person's prior criminal record, if any, and any prior failures to appear;
- Any facts indicating the possibility of violations of law if the person is released without certain conditions;
- Any facts indicating likelihood that there will be an intimidation or harassment of possible witnesses by the person; and
- Any other facts tending to indicate that the person has strong ties to the community and is not likely to flee the jurisdiction.

## **Types of Bond Set by the Court**

After considering all relevant criteria, including the defendant's risk of danger to the community and for failure to appear for court, the judicial officer shall set the type of bail bond and the conditions of bail bond. Types of bail bond include unsecured personal recognizance bonds (with or without nonmonetary conditions of release), bonds with a secured monetary condition, and bonds with secured real estate conditions.

Unsecured bonds include:

1. Personal Recognizance\*
  - With or without an additional obligor
  - With or without additional nonmonetary conditions of release designed specifically to reasonable ensure court appearance or the safety of any person or persons in the community.

\* The judicial officer must have the District Attorney's consent to grant a Personal Recognizance bond if:

1. The person is currently free on another bond of any kind in another criminal action involving a felony or class 1 misdemeanor;
2. 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
3. The person has willfully failed to appear on bond in any case involving a felony or class 1 misdemeanor in the past five years.

In addition, the judicial officer may not grant a Personal Recognizance bond if the person is presently on release under surety bond for felony or class 1 misdemeanor charges unless the surety has been notified and afforded an opportunity to surrender the person into custody in order to be exonerated from that bond.

Bonds with a Secured Monetary Condition:

- may be set when reasonable and necessary to ensure the appearance of the person or the safety of any person or persons in the community;
- shall be set in an amount of money that the person must post with the court in order for the person to be released;
- may be posted in any method 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 ensure the appearance of the person in court or the safety of any person or persons in the community
  - methods include:
    - deposit of the full amount in cash with the clerk of the court;
    - securing with real estate;
    - securing with sureties worth at least one and one-half of the security set; or
    - posting by a bail bonding agent.
- shall not exceed the amount of the maximum penalty when the person is charged with an offense punishable by fine only.

## Hearing After Setting of Monetary Conditions of Bond

Pursuant to §16-4-107, if the court imposed a monetary condition of bond for release, and after seven days from the bond setting is in custody and unable to meet the monetary obligation of the bond, the person may file a written motion for reconsideration of the monetary condition of the bond:

- Only one motion may be filed under this section
- The motion may only be filed if the person believes that, upon presentation of evidence not fully considered by the court, that person is entitled to:
  - a personal recognizance bond;
  - an unsecured bond with conditions of release; or
  - a change in the monetary conditions of bond.
- The court shall consider the results of any empirically developed risk assessment instrument.

The court shall promptly hold a hearing within no more than 14 days of the filing of the motion; or 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.

## Conditions of Release on Bond

### Mandatory Conditions

- Appearance in court;
- For every felony charge, a waiver of extradition;
- Prohibition against the commission of any felony while on bond;
- For a domestic violence or stalking charge, acknowledgement of the protection order;
- For a driving under an alcohol-related restraint charge, a prohibition against driving any motor vehicle;
- For a DUI or DWAI charge, if the person has one or more prior convictions, a prohibition against the use of alcohol or illegal drugs and monitored abstinence. Upon the filing of a motion for relief from this condition, the court shall hold a hearing pursuant to §16-4-105(6)(b).

### Non-mandatory Conditions

- Monetary conditions, when appropriate, as described in §16-4-104(1)(c);
- Additional conditions that will assist in obtaining the appearance of the person in court and the safety of any person or persons in the community, including, but not limited to:
  - Supervision by a pretrial services program or qualified person or organization;
    - Periodic telephone contact
    - Periodic office visits
    - Periodic visits to person's home by program
    - Mental health or substance abuse treatment, including residential, if the person consents to treatment

- Periodic drug or alcohol testing
- Domestic violence counselling if the person consents to the counseling
- Electronic or global positioning
- Pretrial work release; and
- Other supervision techniques shown by research to increase court appearance and public safety for persons released on bond.

## **A Defendant Not Appropriate for Release from Custody**

A defendant may not be appropriate to release from custody because of apparent unmanageable risk to public safety or risk of failure to appear. In these instances, the judicial officer has three options:

### Option 1: Constitutional and Statutory Remand to Custody for Public Safety Considerations Only

A defendant may be held in custody pretrial if charged with a capital offense when proof is evident or presumption is great, or if charged with certain crimes enumerated in Art. II, Section 19 of the Colorado Constitution and § 16-4-101, C.R.S., and after a hearing to determine whether the defendant should be deemed ineligible for a bail bond and remain in custody. If, after reviewing the findings and recommendations of Pretrial Services, and arguments presented by the District Attorney and defense counsel, the judicial officer finds that “the proof is evident or the presumption is great as to the crime alleged to have been committed and finds that the public would be placed in significant peril if the accused were released on bail” for the enumerated charges, the defendant may be remanded to jail until the disposition of the defendant’s case. The finding concerning “peril” to the public includes consideration of whether there is no condition or combination of conditions of bail bond or supervised pretrial release that will protect the safety of the community or any person.

### Option 2: Other Remand to Custody for Public Safety Considerations Only

For a defendant whose case does not fit the criteria set forth in Art. II, Section 19 of the Colorado Constitution and § 16-4-101, C.R.S., and for whom the Pretrial Services Unit has stated that there is no set of conditions that can reasonably assure community safety, the judicial officer may set the bail bond with an appropriate financial condition, limited by relevant statutory and constitutional considerations.

### Option 3: Remand to Custody for Failure to Appear Considerations

For a defendant for whom Pretrial Services has stated that there is no set of non-monetary conditions that can reasonably assure court appearance, the judicial officer may set a bail bond with an appropriate financial condition, limited by relevant statutory and constitutional considerations, that helps assure the defendant’s presence in court.

## **Modification of Bail Bond**

Upon motion by the district attorney or the defendant for a change in the type or conditions of bail bond, or by Jefferson County Pretrial Services for an alleged breach or threatened breach of bail bond conditions, the judicial officer may consider changes to the defendant's type of bail bond and the conditions of bail bond, and make changes, if warranted, based on the process and schedule described above.

# **ATTACHMENT - General Instructions for Advisements and Amended Process and Schedule for the Setting of Bail Bonds:**

## **General Instructions for Advisements**

### **Book-in at the Detention Facility**

- Beginning at 4:00 a.m., Sunday, April 3, 2011, jail staff will inform all defendants arrested for new crimes in Jefferson County (excluding municipal, and whether those arrests were warrantless or from warrants that had pre-existing no-bond holds), that they have no-bond holds (refer to the bond process and schedule created by this Order, *infra*) and will be seen by a judge at the next scheduled advisement. These defendants will only be eligible to bond out of the Detention Facility after they see the judge at an advisement hearing at 10:00 a.m. Monday through Friday or at the designated time for a weekend advisement. Weekday advisements will be held for all defendants not yet advised and who were booked into the Detention Facility before 4:00 a.m. on the day the advisement is to be held. Weekend advisements will be held for all defendants not yet advised and who were booked into the Detention Facility before six (6) hours prior to the time designated for weekend advisements (i.e., before 7:00 a.m. when the advisement is normally scheduled for 1:00 p.m. on either a Saturday or Sunday).

### **Pretrial Services' Pretrial Assessments**

- Pretrial Services (PTS) will prepare a pretrial assessment on all qualifying defendants as soon after book-in as possible. The jail will hold defendants in the booking area until PTS has completed the interview portion of the assessment. PTS will attempt to verify all defendant-provided information by contact with a named third party who is not a victim of this offense. PTS will indicate on the assessment what information was or was not verified and in what manner the information differed.
- PTS will use the cover sheet created for the Bail Impact Study, or any other form approved for use by the court, for the pretrial assessment packet. The sheet will indicate:
  - Whether the defendant is only eligible for a PR bond with the DA's consent, and the reason why.
  - Whether the defendant is not currently eligible for a PR bond because of a qualifying previous surety bond.
  - Whether PTS recommends pretrial supervision or not, and the reason why.
  - Which specific conditions of bail bond and/or pretrial supervision PTS recommends.
- For all days of the week on which advisements are held, PTS will provide the cover sheet or other approved form, along with all supporting information (e.g., information from the defendant's interview, failure to appear and criminal history, affidavit) to the court, the DA's Office, and the Public Defender's Office at least one hour prior to advisements (i.e., by 9 a.m. on weekdays and one hour before the time designated for weekend advisements).



- The pretrial assessment will also be available to private defense attorneys who appear at the courthouse for Monday through Friday advisements or at the jail for weekend advisements.
- The Clerk of the Court, Pretrial Services Unit, and the Detention Facility's Inmate Services Unit have agreed to several changes to how documents are created, filed, and shared. These changes will increase the accuracy and completeness of information and the efficiency with which the information is shared.

#### **PTS's Pre-Advisement Release**

- PTS bond commissioners' authority to grant pre-advisement personal recognizance bonds is terminated.

#### **Advisements and Bond Setting**

- The DV Fast Track docket will still only occur weekdays at 3 p.m.
- All defendants on fugitive status will be advised Monday through Friday only.
- On weekends, the weekend duty judge may decline to advise and set bail for any defendant, and schedule that defendant for advisement on the next business day.
- On weekends, PTS staff will electronically record the advisement proceedings and transfer the recordings to the Clerk of Court.
- On weekends, the weekend duty judge will read aloud information (e.g., case numbers (when available), defendant's name, arresting agency's case number) that will enable the Clerk of Court to later identify each defendant's proceedings on the recording.
- For all advisements, PTS will prepare the advisement docket by ordering the felony cases first, followed by misdemeanor and other types of cases, subject to ordinary exceptions given for cases with special circumstances (e.g., interpreter required, public defender requests to take cases out of order).
- An attorney from the DA's Office may be present for all advisements and bond settings, and may make recommendations for conditions of bail bond to the court, taking into consideration any information provided by victims or victim advocates.
- An attorney from the Public Defender's Office may be present for all advisements and bond settings, and may make recommendations for conditions of bail bond to the court on the cases that they choose. The public defender may also provide to all in-custody defendants some general statement concerning the advisement hearings and representation.
- Private defense attorneys may appear for advisements at the courthouse Monday through Friday (non-holiday) and at the Detention Facility on weekends.
- For all days of the week, PTS staff will make arrangements for any needed interpreters to be present at advisements.
- PTS will use the "Pretrial Services Release Agreement" to inform defendants of their court-ordered bond conditions.
- For defendants advised Monday through Friday, the DA's Office will continue to have four days for the filing of charges. For defendants advised on weekends, the DA's Office has until the following Friday for the filing of charges. All filings of charges are subject to variation by request and court order in any particular case.

### **Release from Custody**

- All global positioning monitoring (GPS) hook-ups will continue to be performed at the jail prior to the defendant's release from custody. The Pretrial Services Unit will refer defendants placed on other electronic monitoring systems (e.g., SCRAM, Sleep Time, etc.) to the appropriate monitoring agency for connection, unless the judge makes it a specific condition of bond that the connection occur prior to release.
- Defendants for whom the judge sets bail on weekends, and who have a criminal protection order with boxes 2 ("Shall vacate the home of the victim(s), stay away from the home of the victim(s), and stay away from any other location the victim(s) is/are likely to be found") and/or 3 ("Shall refrain from contacting or directly or indirectly communicating with the victim(s)") checked, will be placed on a "Court Hold" and may not be released from the Detention Facility until at least the morning of the next business day. PTS will stamp, in purple, "Court Hold" on the criminal protection order to designate these defendants. By 9:00 a.m. on the morning of the next business day, the Clerk of Court will enter the protection order information into the CCIC database, and then send to the Detention Facility an email (or fax as a backup) stating that the Court Hold can be removed. Defendants may then leave the Detention Facility after they post their bail bond. As soon as possible on the first business day after weekend advisements, the Clerk of Court will also send to the DA's intake unit an email or fax listing the court case numbers assigned to the weekend cases.
- Defendants who have a domestic violence misdemeanor case and who are advised on weekends will be given a return to court date of Monday at 3:00 p.m. or Tuesday at 3:00 p.m. if Monday is a holiday.
- Defendants who have a misdemeanor case that is not domestic violence and who are advised on weekends will be given a return to court date of the next business day at 1:15 p.m.
- The jail will continue to notify the PTS Supervision Unit of which pretrial inmates were released since the last working day.

### **Pretrial Supervision**

- Intakes for pretrial supervision will continue to occur in the Administration and Courts Building during weekday business hours.
- During the intake meeting, and subsequently as needed thereafter, PTS will continue to use the "Jefferson County Pretrial Services Supervision Agreement" to review with defendants their court-ordered bond conditions.
- PTS will provide supervision consistent with the protocol described in the "Jefferson County Pretrial Services Managing Defendants' Behavior through Pretrial Supervision" and the "Jefferson County Pretrial Services Response to Violations of Bond." All PTS case managers will provide pretrial supervision for defendants. Victim advocates may contact PTS Supervisor Jesse Masciotro (or the current PTS supervisor), to discuss topics related to any case under pretrial supervision.

### **Evaluation**

- With the help of Detention Facility staff, the Pretrial Services Unit will perform a daily bond review process, which will notify judges within 72 hours of

defendants' advisements whether those defendants are still in custody, as well as the defendants' stated reasons for not posting their bonds. Judges will receive this information via email. They are encouraged to read it, but will not be required to act on it or respond to it. This procedure will terminate on September 30, 2011 (the end of the pretrial grant) unless the bench and the Pretrial Services Unit agree to its continuation.

- Criminal Justice Planning Unit staff will analyze and report on this data to the Judges of the First Judicial District and to the Colorado Division of Criminal Justice.