



CML
 COLORADO MUNICIPAL LEAGUE

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 Vail


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Criminal Justice Reform: What Municipalities Can Expect
Presented By:
Judge Robert Frick, Presiding Judge, City of Longmont
Judge Shawn Day, Presiding Judge, City of Aurora and Town of Bennett


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Where the Reform Is Coming From




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Reform Legislation That Has Passed

- **HB17-1338:** 13-10-111.5. Notice to municipal courts of municipal holds.
- **If the sole reason for a defendant’s hold is your court and you do not hold a hearing within 2 calendar days (excluding Sundays and Federal Holidays) of receiving notice from the jail, the Defendant shall be released on P.R. Bond,**
- **Exceptions may apply to extend to four calendar days (excluding Sundays and Holidays) if the Defendant has failed to appear in the case at least twice and the Defendant is incarcerated outside of court’s home county.**


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Suggested practices to comply with HB17-1338:

- Transport the defendant within 48 hours
- Video or phone advisements
- PR bond if appropriate
- Issue “county only” or “area only” warrants


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HB17-1208 Sealing of Records


- Municipal courts can now order municipal records sealed after acquittal or dismissal just as the state courts
- Municipal courts will get the \$60 fee for the sealing
- CML and the municipal judges worked together on this bill for the convenience and fairness to the defendants



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Expungement of Records HB17-1204

- All municipal juvenile records can be expunged
- They can still be provided to law enforcement, probation and other exempted agencies.
- The courts are responsible for determining who has the record
- The courts are responsible for the notification
- The law is retroactive and courts must go back 2 years for records






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HB 16-1309


Requires public defender for detainees at first court appearance



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HB 17-1083: Duty to Advise extended to Municipal Courts EXCEPT Traffic Infractions


- 16-7-207. Court's duty to inform on first appearance in court and on pleas of guilty. (3) This section applies to prosecutions for violations of municipal charters and prosecutions for violations of municipal ordinances, EXCEPT FOR TRAFFIC INFRACTIONS FOR WHICH THE PENALTY IS ONLY A FINE AND ARREST [S PROHIBITED AND FOR WHICH A COURT SHALL NOT ISSUE A BENCH WARRANT, INCLUDING A WARRANT FOR FAILURE TO APPEAR. SECTION 2. Effective date - applicability. This act takes effect the later of May 1, 2017,



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Advisement per 16-7-207 by municipal court at 1st appearance.

- Right to remain silent
- Right to counsel
- If indigent and qualifies, right to court appointed counsel
- Plea must be voluntary & not result of undue influence or coercion
- Right to bail
- Right to jury trial
- Nature of charges



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Advisement to meet felony standards per 16-7-207 by municipal court for any Guilty Plea except traffic infractions.

- Defendant must be reminded of all rights advised of at 1st appearance
- AND the Court must determine that the Defendant is advised of and confirms that he understands:
 - Nature of Charges
 - Elements of the offenses to which Defendant is pleading guilty
 - Effect of plea
 - Plea is voluntary and not the result of coercion or undue influence
 - The right to trial by jury
 - The possible penalties
 - That the Court will not be bound by representations about penalties unless included in a formal plea agreement accepted by the Court, and
 - That there is a factual basis or a waiver of factual basis
 - AND per Municipal Court Rule 210, the court shall inform the defendant of the right to have process issued by the court, without expense to the defendant, to compel the attendance of witnesses in defendant's behalf.






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SB 18-203

The bill requires each municipality, on and after January 1, 2020, to provide independent indigent defense for each indigent defendant facing a possible jail sentence for a violation of a municipal ordinance. Independent indigent defense requires, at minimum, that a nonpartisan entity independent of the municipal court and municipal officials oversee the provision of indigent defense counsel. To satisfy this requirement, a municipality may:

1. Contract directly with defense attorneys to provide independent indigent defense; or
2. Establish a local or regional independent indigent defense commission to appoint and supervise defense counsel*, or
 *(Note: The bill requires the state public defender to appoint the members of any local or regional independent indigent defense commission).
3. Contract with the Office of Alternate Defense Counsel, or
4. Contract with Legal Aid Clinic at an accredited Colorado Law School.



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SB18-203 Cont.

- A municipality that contracts directly with defense attorneys to provide independent indigent defense shall ensure that oversight of such attorneys is provided by the office of alternate defense counsel, by a legal aid clinic at an accredited Colorado law school, or by a local or regional independent indigent defense commission.
- The bill sets forth an annual timeline by which a municipality may request and potentially receive the services of the office of alternate defense counsel to:
 1. Evaluate the provision of defense counsel to indigent defendants; or
 2. Provide defense counsel to indigent defendants at the expense of the municipality
- Cities have to request ADC's attorneys by September 2020 and each September thereafter.

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Upcoming Bail (Bond) Reform

- What is Bail and Why is it important to your municipal court.
 - Does your City pay the County Jail for bed space?
- Quick History of Bail:
 - Bail dates back to Statute of Westminster (1275)
 - No U.S. Constitutional Right to Bail
 - Judiciary Act of 1789 provides for bail in Federal Courts
 - 1898 First Commercial Surety opened in America
 - » Note: U.S. and Philippines only 2 countries that use commercial sureties

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Important U.S. Supreme Court Cases

- Stack v. Boyle, 342 U.S. 1 (1951)
- Carlson v. Landon 342 U.S. 524 (1952)
- With these two cases, the Supreme Court established that while a right to bail is a fundamental precept of the law, it is not absolute, and its parameters must be determined by federal and possibly state legislatures. Where a bail bond is permitted, however, there must be an individualized determination using standards designed to set the bail bond at "an amount reasonably calculated" to assure the defendant's return to court; when the purpose of a money bail bond is only to prevent flight, the monetary amount must be set at a sum designed to meet that goal, and no more.

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Colorado Constitution-Article II

- Section 19. *Right to bail exceptions.* (1) All persons shall be bailable by sufficient sureties pending disposition of charges except:
 - (a) For capital offenses when proof is evident or presumption is great; or
 - (b) When, after a hearing held within ninety six hours of arrest and upon reasonable notice, the court finds that proof is evident or 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 and such person is accused in any of the following cases:
 - (I) A crime of violence, as may be defined by the general assembly, alleged to have been committed while on probation or parole resulting from the conviction of a crime of violence;
 - (II) A crime of violence, as may be defined by the general assembly, alleged to have been committed while on bail pending the disposition of a previous crime of violence charge for which probable cause has been found;
 - (III) A crime of violence, as may be defined by the general assembly, alleged to have been committed after two previous felony convictions, or one such previous felony conviction if such conviction was for a crime of violence, upon charges separately brought and tried under the laws of this state or under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States which, if committed in this state, would be a felony

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What is a Crime of Violence in Colorado

- Defined by statute (C.R.S. 18-1.3-406(2))
 - A) Any crime against an at-risk adult or at-risk juvenile;
 - (B) Murder;
 - (C) First or second degree assault;
 - (D) Kidnapping;
 - (E) A sexual offense pursuant to part 4 of article 3 of this title;
 - (F) Aggravated robbery;
 - (G) First degree arson;
 - (H) First degree burglary;
 - (I) Escape;
 - (J) Criminal extortion; or
 - (K) First or second degree unlawful termination of pregnancy.

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When is Bail Used & Why

- Person stopped for committing a crime
 - Either arrested or released on summons
 - If arrested, taken to jail:
 - Post bail as pre-set or
 - Wait to see judge who determines bail
- 2 Legal Reasons to Require posting of Bail
 - Guarantee Future Court Appearance, or
 - Protect the safety of the Victim or Community

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Why Bail Reform-What's the Problem?

- 66% to 75% of all county jails are filled with charged (not convicted) defendants who can't post bail costing cities and counties significant resources
- Thousand of defendants who are either low risk or face lower penalties are being detained without a conviction.

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Pretrial population in jail

1983

Jail Population

■ Pretrial ■ Convicted

2013

Jail Population

■ Pretrial ■ Convicted

+ Length of Stay almost doubles

*Stats provided by Sue Parro-P-J

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Bail Reform-Where Are We Going?

- 2 Recent Decisions:
 - O'Donnell v. Harris County, Texas
 - 193 page decision
 - 5th Circuit decision
 - In re Kenneth Humphrey (California case)
 - Many other cases filed throughout the U.S.
 - Constitutional Issues: Due Process + Equal Protection
- New Jersey and Washington D.C. Bail Reform (Detention/Release System)

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Bail Reform-Detention/Release System

- Government has authority to detain defendant if flight or safety risk
 - Must provide proper due process right protections

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New Jersey Constitutional Amendment

- No person shall, after acquittal, be tried for the same offense. All persons shall, before conviction, be eligible for pretrial release. Pretrial release may be denied to a person if the court finds that no amount of monetary bail, non-monetary conditions of pretrial release, or combination of monetary bail and non-monetary conditions would reasonably assure the person's appearance in court when required, or protect the safety of any other person or the community, or prevent the person from obstructing or attempting to obstruct the criminal justice process. It shall be lawful for the Legislature to establish by law procedures, terms, and conditions applicable to pretrial release and the denial thereof authorized under this provision.

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New Jersey 2017 data

- There were 142,663 defendants in 2017
- 44,319 were arrested and Risk Assessment was done
- Prosecutors asked for detention in 19,336 cases – or 44% of the time
- Judged detained 8,044, or 42% of requests
- Thus, of arrested defendants, the release rate was 81%, and the detention rate was 18%.
- **The total "system" release rate was 94.2%, and the detention rate was 5.6%**

*Stats provided by Du Zengyi with CCJ

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New Jersey 2017 data – cont.

- In 2017, Judges only ordered a monetary condition of release for 44 defendants - .1%
- Pretrial jail population decreased by 35% in 3 years during pretrial reform period.
- Pretrial jail population decreased by 20% in 2017 alone.

* Slide provided by Bo Zeerip with CCJJ

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D.C. Detention Findings

- Detain if - “. . . the judicial officer finds by 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, the judicial officer shall order that the person be detained before trial.”

* Slide provided by Bo Zeerip with CCJJ

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Washington, D.C.

- Court's grant prosecution detention requests approximately 44% of the time.
 - **Total system release rate is approximately 94%, and the detention rate is 6%.**
- *** These release / detention rates do not include revocations or detentions related to parole or probation.

Slide provided by Bo Zeerip with CCJJ

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Other Bail Reform Taking Place

- New Mexico (Constitutional Amendment and Rules by New Mexico Supreme Court)
- Kentucky, California (SB10), Alaska (SB91), Indiana, Maryland, Connecticut, Washington State, Ohio, New York, Texas, Utah.

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Colorado Bail Reform

- HB 18-1089 (Died in Senate committee)
- The bill stated that, except in certain cases, a court shall not require a defendant arrested and charged for any misdemeanor, petty offense, or municipal code violation to post monetary bail as a condition of being discharged from custody.
 - The bill did include a provision for the court to require a defendant to post a monetary bond if flight risk or safety concern.

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Colorado Commission on Criminal and Juvenile Justice (CCJJ)

- Pretrial Release Task Force (C.R.S 16-11.3-102)
 - Chair: Stan Hilkey, Executive Director of Colorado Department of Safety
 - Members: DA Office, Judicial, Public Defender, Probation, Victim Services, Community Corrections, Sheriff, Chief of Police, Pretrial Services, Defense Bar, Legislators.
- HB18-1287: Adds a representative for municipalities ☺.


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CCJJ Bail Reform Efforts

- Task Force may propose Bail Reform next year.
- Anticipate that the proposed reform may be the same/similar model as New Jersey (Release/Detain Model)
 - Important that Municipalities are at the table!

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CCJJ Bail Reform Efforts

- If reform is passed, municipal courts can expect:
 1. Most, if not all, municipal defendants will be released initially on summons and not detainable.
 2. If subsequent FTA or violation of release condition, then municipal court could detain after a hearing with due process protections. Defendant will have a right to an attorney at the hearing.


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Supreme Court Blue Ribbon Commission

- Colorado Supreme Court Chief Justice Nancy E. Rice announced the formation of the Bail Blue Ribbon Commission to address Colorado's pretrial release practices.
- "With certain exceptions, bond is a right in the State of Colorado," Chief Justice Rice said. "Under the cornerstone concept of innocent until proven guilty, defendants are permitted certain freedoms while cases are heard in court. Equally important are the victims' rights to know that adequate measures to keep them safe and informed are available through quality pretrial services programs. With those considerations, I have authorized this Bail Blue Ribbon Commission."
- The commission is charged with reviewing, evaluating and proposing recommendations for consideration by the Colorado Supreme Court to improve pretrial release practices throughout Colorado.
- * Colorado State Judicial Press Release: March 5, 2018

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Supreme Court Blue Ribbon Commission

- Chief Justice Rice has appointed the following people to serve on the commission for indeterminate terms:
 - Hon. Carlos A. Samour, Jr., Chair, Chief Judge, 18th Judicial District
 - Ms. Mindy Masias, Vice-Chair, Chief of Staff, Colorado Judicial Department
 - Hon. Mark Thompson, Chief Judge, 5th Judicial District
 - Hon. Pattie P. Swift, Chief Judge, 12th Judicial District
 - Hon. Patrick Murphy, Chief Judge, 17th Judicial District
 - Hon. James Hartmann, Chief Judge, 19th Judicial District
 - Hon. Ingrid Bakke, Chief Judge 20th Judicial District
 - Mr. Mike Garcia, Director of Probation Services, Colorado Judicial Department
 - Mr. Jeremy Botkins, Reporter, Senior Assistant Legal Counsel, Colorado Judicial Department
 - Mr. Terry Scanlon, Legislative Liaison, Colorado Judicial Department
 - Mr. Brad Kamby, Director of Arapahoe County Pretrial Services

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Questions?



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