

HOUSE COMMITTEE OF REFERENCE REPORT

\_\_\_\_\_  
Chair of Committee                      Date      April 9, 2019

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB19-1226 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

- 1 Amend printed bill, page 3, lines 2 and 3, strike "amend (5); and".
- 2 Page 4, strike lines 9 through 19.
- 3 Page 5, strike line 16 and substitute "2020, FOR IMPLEMENTATION BY JULY  
4 1, 2020:".
- 5 Page 6, strike lines 4 through 7 and substitute "ADMINISTRATOR. EACH  
6 JUDICIAL DISTRICT SHALL ALSO, IN THE DEVELOPMENT OF THE CRITERIA,  
7 SOLICIT AND OBTAIN THE INPUT OF AT LEAST ONE INDIVIDUAL WHO HAS  
8 BEEN INCARCERATED IN THE JUDICIAL DISTRICT BECAUSE OF AN INABILITY  
9 TO PAY A MONETARY CONDITION OF BOND AND CONSIDER THE INPUT IN  
10 THE DEVELOPMENT OF THE ADMINISTRATIVE ORDER."
- 11 Page 7, line 10, after the first "AND" insert "MAY INCLUDE".
- 12 Page 7, line 11, strike "THAT WILL REASONABLY ASSURE".
- 13 Page 7, strike line 12.
- 14 Page 7, line 14, strike "THE ADMINISTRATIVE ORDER".
- 15 Page 7, strike lines 15 through 23 and substitute:  
16 "(4) THIS SECTION DOES NOT PROHIBIT THE RELEASE OF A

- 1 DEFENDANT PURSUANT TO LOCAL PRETRIAL RELEASE POLICIES THAT  
2 REQUIRE PAYMENT OF A MONETARY CONDITION OF RELEASE PRIOR TO AN  
3 INDIVIDUALIZED DECISION BY A JUDGE OR JUDICIAL OFFICER."
- 4 Page 8, line 5, strike "CONDITIONS AND" and substitute "CONDITIONS. THE  
5 COURT SHALL FURTHER PRESUME RELEASE OF THE DEFENDANT".
- 6 Page 8, lines 10 and 11, strike "NOT APPEAR IN COURT AS REQUIRED; OR"  
7 and substitute "ATTEMPT TO FLEE PROSECUTION; OR".
- 8 Page 8, line 13, after "OBSTRUCT" insert "OR OTHERWISE WILLFULLY  
9 AVOID".
- 10 Page 8, line 17, strike "APPEAR IN COURT AS REQUIRED; OR" and substitute  
11 "ATTEMPT TO FLEE PROSECUTION; OR".
- 12 Page 8, line 18, after "OBSTRUCT" insert "OR OTHERWISE WILLFULLY  
13 AVOID".
- 14 Page 8, line 21, strike "CONSIDER THE RESULTS" and substitute  
15 "CONSIDER:".
- 16 Page 8, strike lines 22 through 27.
- 17 Page 9, strike line 1.
- 18 Page 9, strike lines 24 through 27 and substitute:  
19 "(m) PRIOR FAILURES TO APPEAR THAT INDICATE THE PERSON IN  
20 CUSTODY'S INTENT TO FLEE OR AVOID PROSECUTION;".
- 21 Page 10, strike line 1.
- 22 Reletter succeeding paragraphs accordingly.
- 23 Page 10, line 3, strike "AND".
- 24 Page 10, line 6 strike "JURISDICTION." and substitute "JURISDICTION;  
25 AND".
- 26 Page 10, after line 6 insert:  
27 "(p) THE RESULTS OF AN EMPIRICALLY DEVELOPED AND

1 VALIDATED RISK ASSESSMENT INSTRUMENT DESIGNED TO IMPROVE  
2 PRETRIAL RELEASE DECISIONS BY PROVIDING THE COURT INFORMATION  
3 THAT CLASSIFIES A PERSON IN CUSTODY BASED UPON THE PREDICTED  
4 LEVEL OF RISK OF PRETRIAL FAILURE. ANY RESULTS OF A RISK  
5 ASSESSMENT PROVIDED TO THE COURT MUST INCLUDE THE RISK CATEGORY  
6 OF THE DEFENDANT ALONG WITH THE PREDICTED SUCCESS RATES FOR  
7 EACH RISK CATEGORY. HOWEVER, THE COURT SHALL NOT USE THE  
8 RESULTS OF THE INSTRUMENT AS THE SOLE BASIS FOR SETTING THE TYPE  
9 OF BOND AND CONDITIONS OF RELEASE."

10 Page 14, line 11, strike "AND A REPRESENTATIVE OF" and substitute "A  
11 VICTIM REPRESENTATIVE, AND AN INDIVIDUAL WHO HAS BEEN  
12 INCARCERATED IN THE JUDICIAL DISTRICT OR A FAMILY MEMBER OF AN  
13 INDIVIDUAL WHO HAS BEEN INCARCERATED IN THE JUDICIAL DISTRICT."

14 Page 14, line 12, strike "THE CITIZENS AT LARGE."

15 Page 14, line 13, strike "REPRESENTATIVE OF" and substitute "COUNTY  
16 COMMISSIONER FROM A COUNTY WITHIN THE JUDICIAL DISTRICT."

17 Page 14, strike lines 14 through 16 and substitute "THE CHIEF JUDGE".

18 Page 14, strike line 27 and substitute "ENTITY OR AN AGREEMENT WITH  
19 ANOTHER LOCAL".

20 Page 15, line 1, after the period insert "A GOVERNMENTAL ENTITY SHALL  
21 NOT ENTER INTO A CONTRACT WITH A FOR-PROFIT ENTITY TO PROVIDE  
22 PRETRIAL SERVICES. PRIOR TO ENTERING INTO A CONTRACT WITH A  
23 PRIVATE NONPROFIT ENTITY, A GOVERNMENTAL ENTITY SHALL ENSURE  
24 THE PRIVATE NONPROFIT ENTITY SHALL OPERATE WITHOUT AN  
25 IDENTIFIABLE CONFLICT. ADDITIONALLY, EACH JUDGE REQUIRING  
26 PRETRIAL SERVICES SUPERVISION SHALL ENSURE THAT ANY SUPERVISION  
27 OR OTHER CONDITIONS OF RELEASE FOR A DEFENDANT UNDER PRETRIAL  
28 SUPERVISION ARE THE LEAST RESTRICTIVE CONDITIONS OF RELEASE AND  
29 ARE NOT REQUIRED FOR THE PURPOSES OF FINANCIAL BENEFIT OR GAIN BY  
30 AN ENTITY."

31 Page 15, strike lines 2 through 10.

32 Renumber succeeding subsections accordingly.

- 1 Page 15, strike line 22 and substitute "RISK THAT THE PERSON WILL FLEE  
2 PROSECUTION AND THE RISK OF DANGER TO ANY PERSON OR".
- 3 Page 16, line 3, after "TOOL" insert "THAT HAS BEEN APPROVED FOR USE  
4 BY THE STATE COURT ADMINISTRATOR PURSUANT TO SECTION 13-3-101  
5 (11)(b),".
- 6 Page 16, line 4, strike "AND" and substitute "ALONG WITH".
- 7 Page 16, line 18, strike "(6)" and substitute "(5)(a)".
- 8 Page 17, line 1, strike "(a)" and substitute "(I)".
- 9 Page 17, line 3, strike "(b)" and substitute "(II)".
- 10 Page 17, line 6, strike "(c)" and substitute "(III)".
- 11 Page 17, line 10, strike "(d)" and substitute "(IV)".
- 12 Page 17, line 16, strike "(e)" and substitute "(V)".
- 13 Page 17, line 21, strike "(f)" and substitute "(VI)".
- 14 Page 17, after line 22 insert:  
15       "(b) THE ANNUAL REPORT REQUIRED BY SUBSECTION (5)(a) OF  
16 THIS SECTION BEGINNING IN 2020 AND EACH YEAR THEREAFTER MUST  
17 INCLUDE:  
18       (I) THE TOTAL NUMBER OF CLOSED CASES IN WHICH THE PERSON  
19 WAS RELEASED FROM CUSTODY, WAS SUPERVISED BY THE PRETRIAL  
20 SERVICES PROGRAM, AND, WHILE UNDER SUPERVISION, DID NOT HAVE A  
21 FAILURE TO APPEAR IN COURT THAT WAS NOT FOLLOWED UP BY A COURT  
22 APPEARANCE IN THAT CASE:  
23       (A) WITHIN 30 DAYS; AND  
24       (B) WITHIN 90 DAYS.  
25       (II) THE TOTAL NUMBER OF CLOSED CASES IN WHICH THE PERSON  
26 WAS RELEASED FROM CUSTODY, WAS SUPERVISED BY THE PRETRIAL  
27 SERVICES PROGRAM, AND WAS NOT CHARGED WITH A NEW CRIMINAL  
28 OFFENSE THAT CONSTITUTES A CRIME AS DEFINED IN SECTION 24-4.1-302  
29 (1) THAT WAS ALLEGED TO HAVE OCCURRED WHILE UNDER SUPERVISION.".
- 30 Page 17, line 23, strike "(6)" and substitute "(5)".

1 Page 18, strike lines 19 through 27 and substitute:

2 "(2) MONEY IN THE FUND MUST BE USED TO FUND INDIVIDUAL  
3 COUNTIES OR COUNTIES WORKING IN COOPERATION WITH EACH OTHER  
4 THAT REQUEST FUNDS TO OPERATE OR ASSIST IN THE OPERATION OF A  
5 PRETRIAL SERVICES PROGRAM AS REQUIRED BY SECTION 16-4-106 (1).  
6 MONEY MAY BE USED FOR THE ADMINISTRATIVE AND PERSONNEL COSTS  
7 RELATED TO THE OPERATION OF PRETRIAL SERVICES PROGRAMS AND ANY  
8 ADJUNCT SERVICES INCLUDING, BUT NOT LIMITED TO, PROGRAM  
9 DEVELOPMENT, ASSESSMENT SERVICES, CONTRACT SERVICES,  
10 MONITORING, AND SUPERVISION SERVICES. COUNTIES AND COUNTIES  
11 WORKING IN COOPERATION WITH EACH OTHER ARE ENCOURAGED TO SEEK  
12 FUNDING WHEN NECESSARY TO IMPLEMENT LOCALLY BASED PROGRAMS  
13 DESIGNED TO ACHIEVE THE GOALS OF EFFECTIVE PRETRIAL ASSESSMENT  
14 AND SUPERVISION. IF A COUNTY IS UNABLE TO OPERATE A PRETRIAL  
15 SERVICES PROGRAM AS REQUIRED BY SECTION 16-4-106 (1), THE COUNTY  
16 SHALL REQUEST A WAIVER FROM COMPLIANCE FROM THE STATE COURT  
17 ADMINISTRATOR OUTLINING THE REASONS THE COUNTY IS UNABLE TO  
18 PROVIDE A PRETRIAL SERVICES PROGRAM DESPITE A POTENTIAL  
19 ALLOCATION FROM THE PRETRIAL SERVICES CASH FUND. THE WAIVER  
20 REQUEST SHALL DESCRIBE WHAT NECESSARY RESOURCES ARE  
21 UNAVAILABLE THAT PREVENT THE ESTABLISHMENT OF A PRETRIAL  
22 SERVICES PROGRAM IN THAT COUNTY, WHICH MAY INCLUDE, BUT ARE NOT  
23 LIMITED TO, THE NECESSARY AMOUNT OF FUNDING, THE LACK OF  
24 NECESSARY INFRASTRUCTURE, OR THE LACK OF PERSONNEL OR PROGRAM  
25 SERVICES WITHIN THAT COMMUNITY."

26 Page 19, strike lines 1 through 3.

27 Page 23, line 5, after the period insert "THE STATE COURT  
28 ADMINISTRATOR SHALL REVIEW ANY WAIVER REQUESTS SUBMITTED BY  
29 ANY COUNTY PURSUANT TO THE PROVISIONS OF SECTION 16-4-106.5 TO  
30 DETERMINE IF ANY TECHNICAL ASSISTANCE CAN BE PROVIDED TO THE  
31 COUNTY TO ALLOW FOR THE DEVELOPMENT OF A PRETRIAL SERVICES  
32 PROGRAM. THE WAIVER REQUESTS SUBMITTED TO THE STATE COURT  
33 ADMINISTRATOR SHALL BE INCLUDED IN THE ANNUAL REPORT AS  
34 DESCRIBED IN SECTION 16-4-106 (5) AND (6) ALONG WITH ANY  
35 RECOMMENDATIONS TO THE GENERAL ASSEMBLY REGARDING METHODS OR  
36 FUNDING NEEDED TO ACHIEVE PRETRIAL SERVICES IN EVERY COUNTY IN  
37 THE STATE."

38 Page 23, line 6, strike "(b)" and substitute "(b) (I)".

1 Page 23, after line 9 insert:

2 "(II) (A) BEGINNING ON JULY 1, 2021, ANY RISK ASSESSMENT  
3 INSTRUMENT APPROVED FOR USE MUST HAVE BEEN EVALUATED,  
4 DEVELOPED, AND VALIDATED IN COLORADO TO MAXIMIZE ACCURACY AND  
5 TO STATISTICALLY MINIMIZE BIAS ON THE BASIS OF RACE, ETHNICITY, AND  
6 GENDER. ADDITIONALLY, JUDICIAL RELIANCE ON THE ASSESSMENT IN  
7 PRETRIAL DECISION-MAKING MUST BE EVALUATED FOR BIAS ON THE BASIS  
8 OF RACE, ETHNICITY, AND GENDER. THE EVALUATIONS REQUIRED IN THIS  
9 SECTION MUST BE COMPLETED BY THE DIVISION OF CRIMINAL JUSTICE IN  
10 THE DEPARTMENT OF PUBLIC SAFETY OR A NONPROFIT RESEARCH  
11 ORGANIZATION.

12 (B) ANY APPROVED RISK ASSESSMENT INSTRUMENT MUST BE  
13 EVALUATED FOR ACCURACY AND FOR BIAS AS DESCRIBED IN SUBSECTION  
14 (11)(b)(II)(A) OF THIS SECTION EVERY THREE YEARS.

15 (C) THE JUDICIAL DEPARTMENT AND THE DEPARTMENT OF PUBLIC  
16 SAFETY, AS PART OF THEIR HEARINGS REQUIRED BY SECTION 2-7-203(2),  
17 SHALL PRESENT THE FINDINGS OF ANY STUDY CONDUCTED TO EVALUATE  
18 A RISK ASSESSMENT INSTRUMENT FOR BIAS AND EFFORTS TO REDUCE ANY  
19 IDENTIFIED BIAS.

20 (D) THE JUDICIAL DEPARTMENT AND THE DEPARTMENT OF PUBLIC  
21 SAFETY SHALL COOPERATE TO DEVELOP AND AGREE UPON STATISTICAL  
22 AND REPORTING METHODOLOGIES TO BE USED FOR THE REPORTING  
23 DESCRIBED IN THIS SUBSECTION (11)(b)(II) AND SHALL SUBMIT A PLAN FOR  
24 IMPLEMENTATION OF THE STATISTICAL AND REPORTING METHODOLOGIES  
25 TO THE GENERAL ASSEMBLY BY JANUARY 1, 2020.

26 (III) BEGINNING ON JANUARY 1, 2024, ANY RISK ASSESSMENT  
27 INSTRUMENT APPROVED FOR USE MUST PROVIDE PRETRIAL  
28 DECISION-MAKERS SEPARATE RISK CATEGORY INFORMATION FOR EACH OF  
29 THE PRETRIAL RISKS IDENTIFIED IN SECTION 16-4-104 (1)(a)(I) AND  
30 (1)(a)(II) IF STATISTICALLY POSSIBLE.

31 (IV) IN ORDER TO EVALUATE AN APPROVED RISK ASSESSMENT  
32 INSTRUMENT FOR BIAS AND PROPER MEASUREMENT OF RISK FACTORS,  
33 BEGINNING ON JANUARY 1, 2020, EACH JURISDICTION USING A RISK  
34 ASSESSMENT INSTRUMENT SHALL COLLECT ALL RELEVANT DATA AS  
35 REQUESTED BY THE STATE COURT ADMINISTRATOR IN CONJUNCTION WITH  
36 THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC  
37 SAFETY. THIS DATA MUST INCLUDE, AT A MINIMUM, THE FOLLOWING  
38 INFORMATION FOR EACH PERSON ASSESSED:

39 (A) RACE, ETHNICITY, AND GENDER;

40 (B) THE PRETRIAL RISK CATEGORY;

41 (C) SCORES ASSIGNED TO EACH UNDERLYING VARIABLE USED BY

1 A RISK ASSESSMENT INSTRUMENT;  
2 (D) THE TOTAL RISK ASSESSMENT INSTRUMENT SCORE;  
3 (E) ANY RECOMMENDATION MADE BY A STRUCTURED  
4 DECISION-MAKING DESIGN, IF AVAILABLE;  
5 (F) WHETHER THE RECOMMENDATION OF A STRUCTURED  
6 DECISION-MAKING DESIGN WAS FOLLOWED BY THE COURT, IF AVAILABLE;  
7 (G) THE BOND TYPE SET BY THE COURT;  
8 (H) THE CONDITIONS OF BOND SET BY THE COURT, WHICH MUST  
9 INCLUDE, BUT IS NOT LIMITED TO, THE MONETARY CONDITIONS IMPOSED;  
10 (I) WHETHER THE DEFENDANT WAS RELEASED;  
11 (J) IF THE DEFENDANT FAILED TO APPEAR FOR COURT WHILE ON  
12 SUPERVISION, WHETHER THE DEFENDANT SUBSEQUENTLY APPEARED IN  
13 THAT CASE WITHIN THIRTY DAYS, NINETY DAYS, AND ONE HUNDRED  
14 TWENTY DAYS;  
15 (K) THE PRETRIAL SUPERVISION OUTCOME; AND  
16 (L) THE RESULTS OF ANY ADDITIONAL ASSESSMENTS USED IN  
17 ORDER TO PROVIDE ADDITIONAL INFORMATION TO THE COURT.  
18 (V) UPON REQUEST BY THE DIVISION OF CRIMINAL JUSTICE IN THE  
19 DEPARTMENT OF PUBLIC SAFETY, THE STATE COURT ADMINISTRATOR  
20 SHALL PROVIDE ANY AVAILABLE INFORMATION NECESSARY TO EVALUATE  
21 AN APPROVED RISK ASSESSMENT PURSUANT TO THIS SECTION."

22 Page 23, strike lines 25 through 27 and substitute "SERVICES CASHFUND."

23 Page 24, strike line 1.

24 Page 24, line 10, strike "(6) AND (7)" and substitute "(5) AND (6)".

25 Page 24, strike lines 11 through 21.

26 Renumber succeeding sections accordingly.

\*\* \*\* \*\* \*\* \*\*