December 8, 2021

<u>SENT VIA EMAIL</u>: susan.blanco@judicial.state.co.us

Chief Judge Susan Blanco
8th Judicial District, Colorado
201 La Porte Avenue, Suite 100
Fort Collins, CO 80521

Re: House Bill 19-1225 and Bonding Procedures

Dear Honorable Susan Blanco,

We write to notify you that portions of the 8th Judicial District's Administrative Order 2017-4 regarding pretrial release procedures appear to be out of date and do not reflect changes made by House Bill 19-1225 (HB 19-1225), codified at C.R.S. § 16-4-113. This law eliminated cash bond for many low-level offenses; it was passed unanimously by the Colorado legislature and has been in effect since Governor Polis signed it April 25, 2019. We are certain that, as Chief Judge of Colorado's 8th Judicial District, you will want this Order updated to reflect current law surrounding bonding procedures for low-level offenses.

In response to a recent public records request seeking documents related to bonding practices in the 8th Judicial District, we received the attached Administrative Order 2017-4 *"Administrative Order Concerning Criminal Bonding Procedures To Be Used By Pretrial Intake Unit (Bond Commissioners) For Pretrial Release Pre-Advisement And Bond Application."* As detailed further below, the Order, which has apparently been in effect since 2017, has not been updated to comport with HB 19-1225.

The ACLU of Colorado wrote to all Colorado chief judges in May 2019, detailing the requirements of HB 19-1225. We understand that you have been serving as Chief Judge only since January of this year, and the ACLU's letter may not have been widely distributed. Accordingly, we have attached that letter for your reference to help as you consider updating your Court's written bond procedures.[1] In summary, we note here: **the core mandate of HB 19-1225 applicable to state**

[1] The ACLU of Colorado emailed this letter to Chief Judge Stephen E. Howard on May 20, 2019.

courts is that, for traffic offenses and petty offenses, pretrial defendants must be released on a personal recognizance (PR) bond throughout the pendency of the case and may not be detained pretrial for any reason, including failure to appear, once a judicial officer has considered bond. *See* C.R.S. § 16-4-113 (1) – (2)).

Administrative Order 2017-4, however, requires that bond commissioners set a $150 monetary bond for Class 1 petty offenses, though this practice is outlawed in HB 19-1225. *See Order, p. 6.* Additionally, on page 6, the Order quotes now-outdated portions of C.R.S. § 16-4-113 which were heavily amended by HB 19-1225. It is worth noting that current law still allows courts to apply local pretrial release policies, including money bond schedules or warrants with monetary bonds attached, to facilitate release before individualized consideration of bond. However, once a judge, judicial officer, or bond commissioner considers bond related to an HB 19-1225 offense, any monetary bond must be converted to a personal recognizance bond. *See C.R.S. § 16-4-113(1)(d).*

Based on our initial research, we were pleased to learn that, despite the language in Administrative Order 2017-4, most initial bond hearings in Larimer County Court are largely compliant with the provisions of HB 19-1225. However, we have received credible reports that some 8th Judicial District judges do not follow the mandates of HB 19-1225 in cases where the defendant has failed to appear (FTA) in court. According to those reports: (1) some judges refuse to remove a monetary condition of bond once a person charged with an HB19-1225 offense has been arrested and appeared before the judge on an FTA warrant; and (2) some judges grant PR bonds after an FTA, but require a co-signer on the bond. As described further below, both of these practices violate the letter and spirit of the law.

Pursuant to C.R.S. § 16-4-113 (2), with only a few narrow exceptions discussed in the attached letter, a judicial officer must "release" any person charged with a petty offense or traffic offense through the pendency of the case, regardless of the defendant's failure to appear in court or failure to comply with conditions of release. While the statute contemplates issuance of FTA warrants with monetary conditions attached, it also makes clear that defendants arrested on those warrants are entitled to release on PR as soon as a judicial officer considers bond:

> Nothing in this subsection (2) prohibits issuance of a warrant with monetary conditions of bond for a defendant who fails to appear in court as required or who violates a condition of release. If a defendant is unable to post the monetary condition of bond prior to the next individualized consideration of bond, ***the judge, bonding commissioner, judicial officer, or judicial designee with the***

> ***power to set conditions of release <u>shall release the person on personal recognizance.</u>***"

C.R.S. § 16-4-113(2)(d) (emphasis added).

In other words, a defendant's FTA in court never justifies setting money bond on an HB19-1225 offense, or setting any other condition of release that could result in pretrial detention, once a judicial officer has made an individualized bond determination. Thus, any instances of a judge maintaining a monetary condition of bond due to one or more FTAs in an HB19-1225 case violates the letter of the law, once that defendant appears before the court.

Likewise, HB19-1225 does not authorize a co-signing requirement to PR bonds. Mandating another person's signature for release on PR is requiring an additional form of security that may lead to pretrial detention. After all, some people charged with petty offenses, which are most often crimes of poverty, will not be able to find someone to co-sign. This is particularly true for many of those experiencing homelessness. The testimony and advocacy surrounding HB19-1225 focused heavily on ensuring that impoverished people no longer be held in pretrial detention in Colorado for low-level offenses. Requiring a co-signer for PR bonds diminishes these protections for some of the most marginalized people in the State. Without a co-signer, individuals in these low-level cases will remain incarcerated pre-trial, which is precisely the result HB 19-1225 was designed to avoid.

We have learned that a subcommittee is working to update some of the Court's administrative orders. As we hope you will agree, any change to Order 2017-4 should make the bounds of HB 19-1225 clear: **a defendant's failure to appear or failure to comply with release conditions does not justify setting a monetary condition of bond, requiring a co-signer for release, or setting any condition that will result in the defendant's pretrial detention on HB 19-1225 charges**. We would appreciate an update regarding any changes you make to Order 2017-4 as it relates to HB19-1225. If we can be helpful to you in anyway, please feel free to contact either of our offices.

Sincerely,

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Attach. A - May 20, 2019 Letter from ACLU of Colorado Re: HB19-1225
Attach. B - 8th Judicial District's Administrative Order 2017-4