



October 31, 2023*

Re: Senate Bill 21-271's Impact on Pretrial Release Mandates in Municipal Court

To: All Municipal Court Judges and City Attorneys

Dear Judges and City Attorneys:

We write to share information that may have been overlooked by some municipal courts about the interplay between [Senate Bill 21-271](#) ("SB-271"), Misdemeanor Reform, and the pretrial release mandates of [House Bill 19-1225](#) ("HB-1225"), No Monetary Bail for Certain Low-level Offenses.¹

The American Civil Liberties Union of Colorado (ACLU) and Colorado Freedom Fund (CFF) supported these bipartisan bills, and we are committed to ensuring statewide compliance with their mandates. Providing all Colorado courts with notice of the impact of SB-271 is a critical part of that compliance work.

The interplay of SB-271 and HB-1225 is clear for county courts, but the analysis is more complex (and the impact larger) for municipal courts. As described in more detail below, under the combined provisions of HB-1225 and SB-271, **many municipal offenses newly require mandatory pretrial release, and municipal courts that see in-custody defendants will need to fully review their municipal code to determine which offenses are impacted.**

HB-1225

HB-1225 was enacted in 2019 after unanimous passage by the Colorado legislature with the goal of permanently ending pretrial detention for the lowest level offenses in the state. As background, **attached you will find a fact sheet and an example of a letter detailing HB-1225's requirements**, sent by the ACLU of Colorado shortly after passage of the new law. Briefly, HB-1225 mandates as follows:

- I. Courts must not impose monetary conditions of release upon defendants charged with traffic offenses, petty offenses, comparable municipal offenses, or any municipal offenses

¹ While we recognize SB-271 has been in effect since March 1, 2022, we also know courts are extremely busy with docket while accommodating the impact of new bills every legislative session.

for which there is no comparable state misdemeanor. [C.R.S. §§ 16-4-113\(2\)\(a\) and \(2\)\(b\)](#).² This mandate of pretrial release applies throughout the pendency of the case, including after arrest for failure to appear or failure to comply.

- II. Courts retain discretion over setting money bond in two circumstances: (1) Jurisdictions may continue to use local pretrial release policies, including money bond schedules, to allow for a defendant's release prior to an individualized bond setting; and (2) Courts may still issue warrants with monetary conditions of release for a violation of a bond condition. However, in each of these instances, if the defendant is still in custody at their first appearance, the judicial officer must release the defendant on a personal recognizance bond. [C.R.S. § 16-4-113\(2\)\(c\)-\(d\)](#).

SB-271

SB-271 changed Colorado's sentencing grid for misdemeanors, reclassifying hundreds of offenses to better reflect the nature of the harm to be addressed, particularly for crimes without a named victim. The sentencing and reclassification reforms were introduced as part of an unanimously approved package from the Sentencing Reform Task Force of the Colorado Commission on Criminal and Juvenile Justice (CCJJ). SB-271's reclassifications are intended to reflect shared values of predictability, equity, and proportionality in sentencing.

Directly relevant to HB-1225, SB-271 reclassified nearly 200 offenses from misdemeanors to petty offenses (while lowering the maximum sentence for petty offenses from 6 months to 10 days). As a result, under the clear mandates of HB-1225, courts must not set monetary bond for individuals charged with any of these newly reclassified petty offenses. [C.R.S. §§ 16-4-113\(2\)\(a\) and \(2\)\(b\)](#). Instead, courts must set a personal recognizance bond on any such charges.

Impact of SB-271 on Municipal Courts

After SB-271's passage, a larger set of municipal offenses now requires release on personal recognizance in municipal courts specifically. Although SB-271 does not change municipal codes, municipal courts may not impose monetary conditions of release when a defendant is accused of any municipal offense (1) that is comparable to a state petty or traffic offense, or (2) "for which there is no comparable state misdemeanor." [C.R.S. § 16-4-113\(2\)\(b\)](#).

Therefore, municipal courts must review their code for ordinances that are comparable to the newly classified state petty offenses. Any current or future municipal charges for offenses comparable to those reclassified require mandatory pretrial release on a personal recognizance bond throughout the pendency of the case. Municipalities are still entitled to criminalize conduct the state has not criminalized, but under the continuing mandates of HB-1225, those defendants may not be detained pretrial for any reason following their appearance before a judicial officer, including after arrest for failure to appear or failure to comply.

² Only three low-level offenses – and any municipal offenses with substantially similar elements – are exempted from HB-1225's mandatory pretrial release requirement (traffic offenses involving death or bodily injury, eluding, and operating a vehicle after circumventing an interlock device). [C.R.S. §§ 16-4-113\(2\)\(e\)\(I\)-\(III\)](#).

SB-271 reclassified many crimes associated solely with poverty as petty offenses. These types of low-level offenses — often referred to as “quality of life offenses” by municipalities — are most often charged as municipal offenses rather than state offenses. It is very likely you will find offenses in your city’s municipal code comparable to many newly classified state petty offenses, including:

- **Trespass 2 and 3**- unlawfully entering or remaining on another’s premises, including fenced in areas and common areas of hotels and apartment buildings, [C.R.S. §§ 18-4-503](#) and [18-4-504](#).
- **ID card offenses**- lending, unlawfully copying, and more, [C.R.S. § 42-2-309\(1\)](#).
- **Disorderly conduct as a category**, including:
 - public fighting, [C.R.S. §§ 18-9-106\(1\)\(d\)](#);
 - offensive public gestures and utterances tending to incite a breach of the peace, [C.R.S. §§ 18-9-106\(1\)\(a\)](#);
 - unreasonable noise in a public place or near a private residence, [C.R.S. § 18-9-106\(1\)\(c\)](#).
- **Prostitution**, [C.R.S. § 18-7-201](#).
- **Soliciting for or patronizing a prostitute**, [C.R.S. § 18-7-202\(2\)](#); [C.R.S. § 18-7-205\(2\)](#).
- **Failure to register a vehicle**, [C.R.S. § 42-3-103\(4\)](#).

Additionally, various property crimes, including theft and fraud, are now considered petty offenses or misdemeanors based on a new cut point of \$300. [C.R.S. § 18-4-401\(2\)\(b\)](#); [C.R.S. § 18-5-205\(2\)](#). For your reference, attached to this letter is a complete list of misdemeanor offenses that were reclassified as petty offenses under SB-271.

Our organizations frequently engage at the municipal level and we look forward to confirmation that these bipartisan reforms are in effect across the state. We hope this information is helpful to your court as you review your municipal code for the relevant comparable offenses. Please feel free to contact either of our offices to discuss this matter further.

Sincerely,

Rebecca Wallace

Rebecca Wallace
Policy Director
COLORADO FREEDOM FUND
Rebecca@ColoradoFreedomFund.org

Timothy R. Macdonald

Tim Macdonald
Legal Director
ACLU of Colorado
tmacdonald@aclu-co.org

Encl. [Letter from ACLU of Colorado Re: House Bill 19-1225 \(May 20, 2019\)](#)
[HB19-1225 Fact Sheet](#)
[Complete list of misdemeanor offenses reclassified as petty offenses under SB-271](#)

* A previous version of this letter, dated October 9th, 2023, included an extraneous offense not reclassified by SB-271 (false reporting and identification) which has been removed from this version .