

Colorado Decision Tree for Setting Bond Type

by

**Michael R. Jones
Pretrial Justice Institute**

and

**Timothy R. Schnacke
Center for Legal and Evidence-Based Practices**

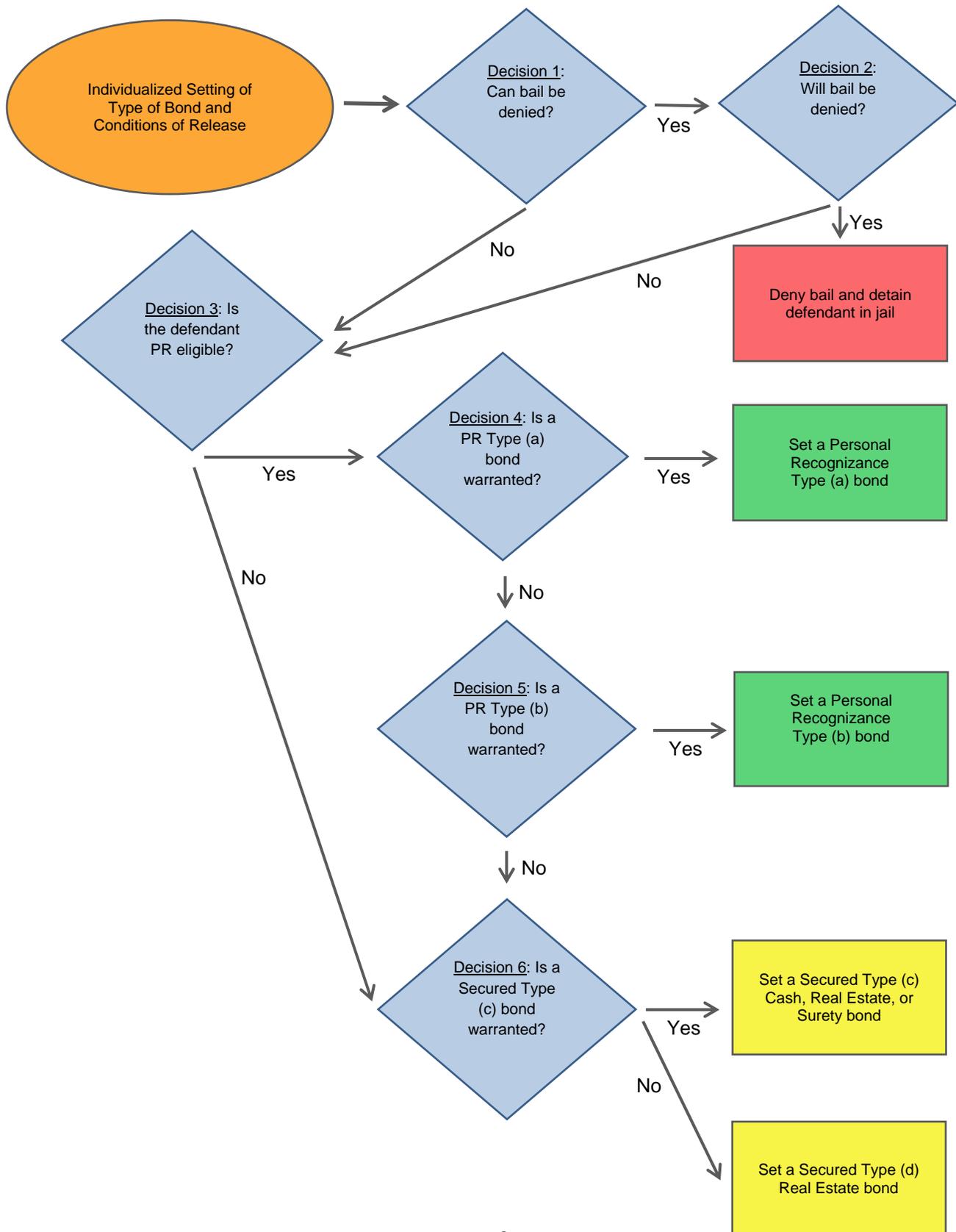
October, 2013

Note to Readers

The enclosed decision tree and supporting information were prepared by Michael Jones, of the non-profit Pretrial Justice Institute, and Timothy Schnacke, of the non-profit Center for Legal and Evidence-Based Practices, in response to requests from several Colorado pretrial officials for clarification on the bond setting process consistent with Colorado's new bail statute passed in May 2013. The decision tree and supporting information reflect the authors' opinions consistent with the full explanation and legislative history of the new bail statute found in Schnacke, T. R. (2013). *Best Practices in Bond Setting: Colorado's New Pretrial Bail Law*, at http://www.clebp.org/images/2013-07-03_New_Colorado_Bail_Law.pdf.

Bond Setting Decision Tree

Refer to subsequent pages for narrative and citations.



[This page was left intentionally blank.]

Individualized Setting of Type of Bond and Conditions of Release¹

Overall considerations:

1. Presume release under the least-restrictive conditions unless the defendant can be denied bail under the Colorado Constitution (C.R.S. 16-4-103 (4) (a)).
2. Individualize all release and detention conditions (C.R.S. 16-4-103 (3) (a), (4) (a), (4) (b), and (5)).
3. Avoid unnecessary pretrial incarceration (C.R.S. 16-4-103 (4) (c) by limiting the use of secured financial conditions (see legislative history in Schnacke, 2013).
4. Consider the defendant's pretrial risk to public safety and for failure to appear in court through an empirically developed risk assessment instrument (C.R.S. 16-4-103 (3) (b); 16-4-106 (4) (c); and 16-4-107).

Decision 1: Can bail be denied?

- Answer "Yes" if, pursuant to Section 19 of Article II of the Colorado Constitution, the defendant can be denied bail because he or she is charged with the following:

Capital offenses; or

(I) A crime of violence alleged to have been committed while on probation or parole resulting from the conviction of a crime of violence; or

(II) A crime of violence 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; or

(III) A crime of violence 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.

- Answer "No" otherwise.²

¹ To the extent possible, the type of bond and conditions of release should be set as a stand-alone consideration and without regard to other legal matters such as existing bonds, other pending cases or charges, holds, sentences, etc., because the defendant's bond is still relevant when those other legal matters are resolved, dropped, or dismissed.

Decision 2: Will bail be denied?

- Answer “Yes” if, pursuant to Section 19 of Article II of the Colorado Constitution, the judicial officer decides to deny bail:
 - After finding “proof is evident or presumption is great” when the charge is a capital offense;

or

 - After a hearing held within 96 hours of arrest and upon reasonable notice, in which the judicial officer finds proof evident or presumption great as to the charges listed in (I), (II), or (III) in Decision 1 above, and that the public would be placed in significant peril if the accused were released on bail.
- Answer “No” otherwise.

Decision 3: Is the defendant PR eligible?

- Answer “Yes” if the defendant is statutorily eligible for a personal recognizance (PR) bond by not being subject to the exclusions in C.R.S. 16-4-104 (3).
- Answer “No” otherwise.

Decision 4: Is a PR Type (a) bond warranted?

- Answer “Yes” if a C.R.S. 16-4-104 (1) (a) type bond (an unsecured personal recognizance (PR) bond with statutorily mandated conditions and possibly with a co-signor) is sufficient to reasonably assure court appearance and public safety, is the least restrictive bond type, avoids unnecessary pretrial incarceration, and accounts for the defendant’s pretrial risk. If the defendant does not have any of the three circumstances in (a) through (c) in the “Answer No” section below, or if the district attorney consents despite the defendant having any of the three circumstances, the answer is “Yes” (see C.R.S. 16-4-104 (2)).
- Answer “No” if:
 - A C.R.S. 16-4-104 (1) (a) type bond (unsecured personal recognizance bond with statutorily mandated conditions and possibly with a co-signor) will not ensure court appearance and public safety.

or

² References to Sections 16-4-101 (1) (b) (IV) and (V) of the Colorado Revised Statutes were intentionally omitted from this flowchart because they have no counterpart in Article II, Section 19 of the Colorado Constitution.

- If any one of the three following circumstances are present (C.R.S. 16-4-104 (2) (a) to (c)) and the district attorney does not consent:
 - (a) The person is presently free on another bond of any kind in another criminal action involving a felony or class 1 misdemeanor; or
 - (b) 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
 - (c) The person has willfully failed to appear on bond in any case involving a felony or a class 1 misdemeanor charge in the preceding five years.

Decision 5: Is a PR Type (b) bond warranted?

- Answer “Yes” if a C.R.S. 16-4-104 (1) (b) type bond (an unsecured personal recognizance (PR) bond with additional non-monetary conditions of release designed specifically to reasonably ensure court appearance and public safety) is the least restrictive bond type, avoids unnecessary pretrial incarceration, and accounts for the defendant’s pretrial risk.
- Answer “No” otherwise.

Decision 6: Is a Secured Type (c) bond warranted?

- Answer “Yes” if a secured financial condition is “reasonable and necessary to ensure the appearance of the person in court or the safety of any person or persons in the community” (C.R.S. 16-4-104 (1) (c)). The secured condition may be satisfied by either cash, real estate, or noncommercial or commercial sureties (C.R.S. 16-4-104 (1) (c) (I) to (IV)).
- Answer “No” otherwise, and set a Secured Type (d) real estate bond. To set this type of bond, the court must determine “that release on an unsecured personal recognizance bond without monetary conditions will not reasonably ensure the appearance of the person in court or the safety of any person or persons in the community” (C.R.S. 16-4-104 (1) (d)). This determination can be made after the judicial officer has considered all other previously described bond types and deemed them insufficient. In many cases, this type of bond would be considered highly restrictive, which necessitates the express finding that the unsecured bond will be insufficient. In some cases, however, a court-ordered real estate condition may be deemed less restrictive than secured monetary conditions (i.e., cash or surety) when those conditions would lead to unnecessary pretrial incarceration.