

Supreme Court of Kentucky

2011-12

ORDER APPROVING JUDICIAL GUIDELINES FOR PRETRIAL RELEASE AND MONITORED CONDITIONAL RELEASE

Under Section 116 of the Kentucky Constitution and KRS 27A.096, the Judicial Guidelines for Pretrial Release and Monitored Conditional Release are hereby approved as follows:

Section 1. Purpose

KRS 27A.096 states:

- (a) The Supreme Court shall establish recommended guidelines for judges to use when ordering pretrial release and monitored conditional release for defendants whose pretrial risk assessments indicate that they are moderate or high risk and would otherwise be ordered to a local correctional facility while waiting for trial.
- (b) The Supreme Court shall establish recommended guidelines for judges to use to determine whether defendants whose pretrial risk assessments indicate that they are moderate to high risk and are eligible for pretrial supervision.
- (c) Judges shall consider the guidelines established by the Supreme Court pursuant to this section when setting terms of pretrial supervision.

Section 2. Definitions

As used in these sections, unless the context otherwise requires:

- (a) "Conditions of release" has the same meaning as that set forth in RCr 4.00(c).
- (b) "High risk defendant" means a defendant who has been determined through the pretrial risk assessment to pose a high risk of flight and anticipated criminal conduct. Under KRS 431.066 and these guidelines, level of risk also includes a

determination by the court as to the defendant's likelihood of appearing for trial and risk of danger to others.

- (c) "Individual risk and needs" means behaviors and conditions identified by scientific evidence to contribute to an individual defendant's risk of flight and anticipated criminal conduct, as determined by the pretrial interview, investigation and risk assessment.
- (d) "Low risk defendant" means a defendant who has been determined through the pretrial risk assessment to pose a low risk of flight and anticipated criminal conduct. Under KRS 431.066 and these guidelines, level of risk also includes a determination by the court as to the defendant's likelihood of appearing for trial and risk of danger to others.
- (e) "Moderate risk defendant" means a defendant who has been determined through the pretrial risk assessment to pose a moderate risk of flight and anticipated criminal conduct. Under KRS 431.066 and these guidelines, level of risk also includes a determination by the court as to the defendant's likelihood of appearing for trial and risk of danger to others.
- (f) "Pretrial risk assessment" means an objective, research based, validated assessment tool that measures a defendant's risk of flight and risk of anticipated criminal conduct while on pretrial release pending adjudication.
- (g) "Risk level" means (1) the assessed predictability of a defendant's risk of flight and anticipated criminal conduct based upon the validated Kentucky pretrial risk assessment and (2) the assessed risk of a defendant appearing for trial and posing a danger to others based upon the court's determination.
- (h) "Risk reduction plan" means the conditions of release, as recommended to the court by a pretrial officer. The risk reduction plan will be based on the individual risk and needs of a defendant in order to mitigate risk of reoffending or failing to appear.
- (i) "Supervision strategy" means conditions, strategies and supervision levels that pretrial officers employ given both the risk level of the defendant and the ability of the defendant to manage his or her own behavior in the community. Because strategies may change during the course of pretrial supervision, periodic

modifications to the supervision risk reduction plan may be necessary.

Section 3. Pretrial interview, investigation and risk assessment

- (a) Pretrial Services will assemble reliable and objective information relevant to the court's determination concerning pretrial release and supervision, drawing upon information obtained through the interview of the defendant, its investigation and the risk assessment. Pretrial Services will present to the court an assessment of risks posed by the defendant and will recommend ways of responding to the risks through use of appropriate conditions of release.
- (b) The interview, investigation and assessment may include, but are not limited to, information such as:
 - (1) the defendant's age, physical and mental condition, family ties, employment status and history, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings;
 - (2) whether, at the time of the current offense or arrest, the defendant was on probation, parole, or other release pending trial, sentencing, appeal, or completion of sentence for an offense;
 - (3) the availability of persons who could verify information and who agree to assist the defendant in attending court at the proper time;
 - (4) other information relevant to successful supervision in the community;
 - (5) facts justifying a concern that the defendant will violate the law if released without restrictions; and
 - (6) whether there are specific factors that may make the defendant an appropriate subject for conditional release and supervision options, including participation in available drug, mental health or other treatment.

- (c) The presentation of the Pretrial Service's information and the recommendations made to the court will link assessments of the risk of flight and of public safety to appropriate release options designed to respond to the specific risk and supervision needs identified. Suggested release options or conditions will be objectively and consistently applied and will constitute the least restrictive conditions necessary to assure the defendant's appearance for scheduled court events and protect the safety of the community and individual persons.

Section 4. Initial presentation and re-examination of the release decision

- (a) Information obtained by Pretrial Services through the interview of the defendant, its investigation and the risk assessment will be presented to the court within 12 hours of the defendant's incarceration. Failure by Pretrial Services to present this information to the court within 12 hours will not result in the automatic release of a defendant.
- (b) Pretrial Services must inform the court of those defendants in custody who are not released from jail 24 hours after the initial presentation by the pretrial officer. If a defendant continues to be detained 24 hours from the time of the imposition of conditions of release because of the inability to meet such conditions, the court that imposed the conditions must review the conditions on the defendant's written application or may do so on its own motion. If the court declines to modify the conditions, the judge will record in writing the reasons for that decision.
- (c) Pretrial Services will inform the court of those defendants in custody who have not appeared before the court and who are not released from jail after 48 hours. In addition to the information obtained through the interview, investigation and risk assessment, the pretrial officer will provide the court with the current charge and information from the arrest document for a probable cause determination.
- (d) Pretrial Services will provide the court with a weekly report that lists the name of the defendants, the status of the bail and the current charge for defendants who remain in custody pending adjudication.

Section 5. Factors to consider

- (a) Utilizing the pretrial interview, investigation and risk assessment, the pretrial officer will determine whether a defendant poses a low, moderate or high risk of flight or anticipated criminal conduct and will recommend an appropriate risk reduction plan to the court.
- (b) In determining whether there is a substantial risk of nonappearance or threat to the community, any person, or the integrity of the judicial process if the defendant is released, the court should consider the pretrial risk assessment and the pretrial recommendation regarding appropriate conditions of release.
- (c) Factors utilized in the pretrial risk assessment and in making the pretrial recommendation include, but are not limited to, the factors set forth in Section 3.

Section 6. Low-risk defendants

Pursuant to KRS 431.066(2), if, based upon the pretrial risk assessment, the court determines that a defendant poses a low risk of flight and of anticipated criminal conduct, and the court determines that the defendant is likely to appear for trial and is not likely to be a danger to others, the court shall order the defendant released on unsecured bond or on the defendant's own recognizance subject to such other conditions as the court may order.

If the court in its discretion determines that the nature and circumstances of the offense necessitate conditions to ensure public safety and future court appearances, the court should consider, and may place on low-risk defendants, the least restrictive conditions of release.

Section 7. Moderate risk defendants

Pursuant to KRS 431.066(3), if, based upon the pretrial risk assessment, the court determines that a defendant poses a moderate risk of flight and of anticipated criminal conduct, and the court determines that the defendant has a moderate risk of not appearing for trial and poses a moderate risk of danger to others, the court shall release the defendant on unsecured bond or on the defendant's own recognizance, but the court shall consider global positioning system (GPS) monitoring, controlled substance testing, increased supervision, or such other conditions as the court may order.

For a moderate risk defendant, the court may place conditions of release that are related to the defendant's individual risk factors. Through the pretrial interview, investigation and risk assessment, the pretrial officer will identify the defendant's individual risk factors and will recommend to the court an appropriate risk reduction plan and supervision strategy.

Section 8. High risk defendants

If, based upon the pretrial risk assessment, a defendant is determined to pose a high risk of flight or a high risk of anticipated criminal conduct, or the court determines that the defendant has a high risk of not appearing for trial or poses a high risk of danger to others, the pretrial officer will develop and recommend to the court a risk reduction plan and a supervision strategy. The risk reduction plan will take into consideration the defendant's individual risk factors and the conditions of release set forth in Section 9.

Section 9. Conditions of release

- (a) If the court sets conditions of release, the court shall consider imposing the least restrictive release conditions reasonably necessary to ensure the defendant's appearance in court, to protect the safety of the community or any person, to prevent intimidation of witnesses or interference with the orderly administration of justice and to safeguard the integrity of the judicial process. In addition, the court should, in every case, (1) require that the defendant attend all court proceedings as ordered and (2) prohibit the commission of any criminal offense.
- (b) The court will have (1) a wide array of programs or options available to promote pretrial release on conditions that ensure appearance and protect the safety of the community, victims and witnesses pending trial and (2) the capacity to develop release options appropriate to the risks and special needs posed by defendants released to the community. When no conditions of release are sufficient to accomplish the aims of pretrial release, defendants must be detained.
- (c) (c) In setting conditions of release, the court should consider the pretrial officer's recommended risk reduction plan. The conditions of release should be reasonably related to the defendant's risks of nonappearance and danger to public safety that have been identified by the court.

- (d) When conditions of release are imposed, the court may direct the pretrial officer to (1) monitor the defendant's compliance with the nonfinancial conditions and (2) make reports to the court concerning the defendant's compliance with the conditions.
- (e) If a court determines, in the exercise of its discretion, that release on personal recognizance or the execution of an unsecured bail bond will not reasonably assure the appearance of the defendant, KRS 431.520 requires the court to impose any of the conditions of release listed in KRS 431.520(1) through (5) or any other condition deemed reasonably necessary to assure the defendant's appearance as required by the court. Conditions of release may include, but are not limited to:
- (1) reporting to the pretrial officer;
 - (2) prohibition against consuming alcohol or illegal drugs;
 - (3) prohibition against possession of weapons;
 - (4) prohibition against driving;
 - (5) alcohol/drug abuse assessment/evaluation;
 - (6) alcohol/drug treatment;
 - (7) random drug testing;
 - (8) electronic and global positioning system monitoring;
 - (9) restriction of association;
 - (10) restricting place of abode;
 - (11) restricting travel by structuring inclusion and exclusion zones that prohibit travel to specific locations;
 - (12) no contact orders;
 - (13) telephone or other curfews;
 - (14) home incarceration or GPS monitoring;
 - (15) educational and/or employment requirements; and

- (16) payment of court-ordered obligations.
- (f) The defendant shall be notified of upcoming court dates.
- (g) Pretrial officers shall inform the court if a defendant fails to appear in court or is charged with a new crime while on pretrial release.

Section 10. Release decision order provisions

In the release decision order, the court should

- (a) include all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the defendant's conduct.
- (b) advise the defendant of:
 - (1) the consequences of violating a condition of release, including the immediate issuance of a warrant for the defendant's arrest and possible criminal penalties;
 - (2) the prohibitions against threats, force, or intimidation of witnesses, jurors and officers of the court, obstruction of criminal investigations and retaliation against a witness, victim or informant; and
 - (3) the prohibition against any criminal conduct during pretrial release.
- (d) document the reasons for:
 - (1) setting a bail amount that exceeds the maximum amount set forth in KRS 431.525(2) through (5) because the defendant presents a flight risk or is a danger to others;
 - (2) denying a defendant release via bail credit under KRS 431.066 because:
 - (A) the defendant is convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510, KRS 529.100 involving commercial sexual activity, KRS 530.020, 530.064(1)(a), 531.310, or 531.320, or who is a violent offender as defined in KRS 439.3401; or

- (B) the defendant is found by the court to present a flight risk or to be a danger to others; and
- (3) denying a defendant release pursuant to presumptive probation under KRS 218A.135 because the defendant presents a flight risk or is a danger to himself or herself or a danger to others.

Section 11. Court's discretion

Nothing in these Guidelines shall be construed to limit the court's discretion as to whether or not to grant pretrial release to a defendant. The court may determine whether to release a defendant on personal recognizance or unsecured appearance bond, release a defendant on one or more conditions, or detain a defendant.

Section 12: Uniform Bail Schedule

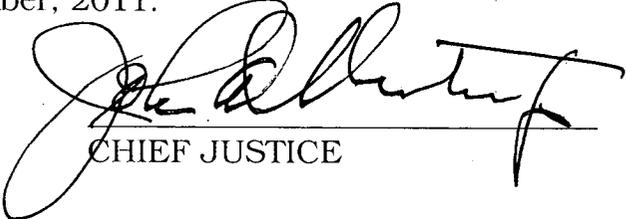
The Uniform Bail Schedule, which was implemented as a pilot program in several jurisdictions, shall continue to apply for purposes of allowing a release on a minimal bond prior to a pretrial investigation and presentation of the defendant's case to a judicial officer.

Section 13: Constitutionality of Underlying Statutes

The adoption of these guidelines does not, either expressly or impliedly, reflect on the ultimate constitutionality of the statutes involved.

All sitting; all concur.

Entered this 15th day of December, 2011.


CHIEF JUSTICE