

Supreme Court of Kentucky

2017-19

**IN RE: Authorization for the Non-Financial Uniform Schedule of Bail
Administrative Release Program**

AMENDED ORDER

I. Introduction

This order hereby authorizes the Non-Financial Uniform Schedule of Bail Administrative Release Program, ("Administrative Release Program") for use throughout the Commonwealth of Kentucky. This order replaces in its entirety Supreme Court Order 2017-01.

No local rules, practices, procedures, orders, or other policies of any district or circuit may conflict with or controvert this order; further, to the extent that any such local rules, practices, procedures, orders, or other policies are inconsistent or otherwise conflict with this order, this order shall prevail.

II. Purpose

The purpose of the Administrative Release Program is to expedite pretrial release of low to moderate risk defendants charged with non-violent, non-sexual misdemeanors and to increase efficiency by reserving resources for higher-risk defendants ordered to pretrial supervision.

III. Implementation

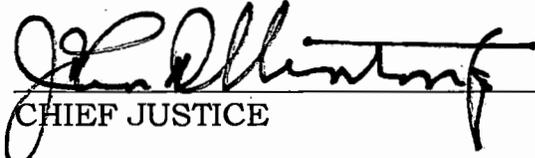
The Administrative Release Program became mandatory on January 1, 2017.

IV. Governance

The Administrative Release Program will be governed by the attached Uniform Local Protocol for the Non-Financial Uniform Schedule of Bail Administrative Release Program and all applicable statutes and rules not inconsistent with this Order.

This Order shall be effective upon entry, and until further Order of this Court.

Entered this 5th day of December 2017.


CHIEF JUSTICE

**UNIFORM LOCAL PROTOCOL FOR THE NON-FINANCIAL
UNIFORM SCHEDULE OF BAIL ADMINISTRATIVE RELEASE PROGRAM**

PART I: DEFINITIONS

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

- A. "Interview" means an investigation of a defendant for the purposes of pretrial release or pretrial supervision.
- B. "Investigation" means a Pretrial Services investigation containing CourtNet and NCIC records, charge information, personal information and demographics, probation status, address, and application of the PSA Risk Assessment (See Appendix A).
- C. "Non-Financial Uniform Schedule of Bail" means the authority granted by the court to a pretrial officer to apply a pre-determined release decision to detained defendants based on a uniform schedule of bail without the need for a judicial review.
- D. "Public Safety Assessment (PSA) Risk Assessment" means the validated risk assessment tool used in Kentucky, containing questions relating to risk of flight or failure to appear and risk of anticipated criminal conduct or new criminal activity.
- E. "Risk Assessment" means an objective, research based, validated assessment tool that measures a defendant's risk of flight or failure to appear and risk of anticipated criminal conduct or new criminal activity while on pretrial release pending adjudication.
- F. "Risk scores" means the numeric values ranging from a low of '0' to a high of '7' that relates proportionally to the defendant's likelihood of failure to appear (FTA) and from a low of '0' to a high of '13' that relates proportionally to the defendant's likelihood of new criminal activity (NCA) pending adjudication.
- G. "Risk level" means a scale from low to high of the risk a defendant poses of pretrial failure (e.g., failure to appear or presenting a danger to the community).
- H. "Sexual Offenses" means any offense defined as sexual under Kentucky Revised Statutes and those listed by Pretrial Services as sexual for purposes of Pretrial release (See Appendix C).
- I. "Verification" means matching a defendant's identity with an official record.

- J. "Verified and eligible defendant" means a defendant who is charged with a bailable offense and whose identity Pretrial Services is able to confirm through investigation.
- K. "Violent Offenses" means any offense defined as violent under Kentucky Revised Statutes and those listed by Pretrial Services as violent for purposes of Pretrial release (See Appendix B).

PART II: ADMINISTRATIVE RELEASE PROGRAM FOR THE PRETRIAL RISK ASSESSEMENT AND NON-FINANCIAL UNIFORM SCHEDULE OF BAIL

Section 1. Obligations of Pretrial Services and Pretrial Officers

Except where explicitly noted, no provision set forth in this order shall absolve the Administrative Office of the Courts' pretrial services agency and pretrial officers employed by the agency from following the Kentucky Rules of Criminal Procedure, including but not limited to: RCr 4.02, RCr 4.06, RCr 4.08, and RCr 4.38; and the Kentucky Revised Statutes, including but not limited to: KRS 431.066, KRS 431.515, KRS 431.518 and Administrative Procedures of the Court of Justice Part XIV, Pretrial Services.

Section 2. Risk Assessment and Risk Level

- A. All verified and eligible defendants will have their risk level assessed by use of the PSA Risk Assessment.
- B. The PSA Risk Assessment tool, once applied to a defendant, will result in the defendant's risk scores being a value between '0' and '7' for failure to appear (FTA) and between '0' and '13', for new criminal activity (NCA) with corresponding risk levels of Low (Risk), Moderate (Risk), or High (Risk) for both the FTA Scale and the NCA Scale.
- C. The Risk Assessment tool will be applied to the defendant prior to or at the approximate time of the pretrial interview. Nothing in this order shall prohibit the tool from being re-applied to the defendant at any time after the initial application.

Section 3. Eligibility and Release Options

- A. Defendants charged with non-violent/non-sexual misdemeanor(s) whose risk scores have been assessed as Low Risk or Moderate Risk on the FTA scale and Low Risk or Moderate Risk on the NCA scale will be eligible under the Schedule and shall be released on recognizance.
- B. Defendants who are eligible for release under subsection A. of this Section but are charged with a misdemeanor offense of KRS 222.202 (Offenses of Alcohol Intoxication or Drinking Alcoholic Beverages in a Public Place), KRS 525.100

(Public Intoxication), or KRS 189A.010 (Operating Motor Vehicle While Under the Influence, "DUI") shall be released on recognizance as follows:

- i. To an adult who is willing to accept responsibility for the defendant through a signature verification on a form prescribed by the Administrative Office of the Courts; or
- ii. At such time as the defendant is able to safely care for himself or herself but in no event shall the defendant be detained for more than eight (8) hours following his or her arrest; or
- iii. Unless such person's release is precluded by other provisions of law.

If the defendant is in need of emergency medical attention, the arresting officer shall obtain medical attention for the defendant prior to delivery to the jail. KRS 71.040.

- C. Defendants charged with an offense that is punishable by a fine only (violations and traffic infractions) shall be released on recognizance regardless of risk scores except defendants charged with offenses of Alcohol Intoxication or Drinking Alcoholic Beverages in a Public Place shall be released in accordance with subsection B. of this Section.
- D. Defendants charged with contempt of court and/or with violation(s) of misdemeanor or felony probation or conditional discharge are not eligible under the Schedule.
- E. Defendants who have allegedly violated a condition of release, including being charged with a new offense while out on bond, are not eligible under the Schedule.
- F. Defendants charged with violation of a protective order are not eligible under the Schedule.
- G. Defendants charged with a DUI 1st offense with injuries or accident or any aggravated circumstances (other than refusals) and DUI 2nd or greater are not eligible under the Schedule. All statutory times shall be followed for all DUI offenses.
- H. Defendants charged with driving on a DUI suspended license are not eligible under the Schedule.
- I. Defendants who have previously failed to appear on the charge or are charged with Bail Jumping are not eligible under the Schedule.
- J. Defendants who decline the pretrial services interview are not eligible under the Schedule.
- K. All defendants not eligible for release under the Schedule shall only be released upon judicial review and conditions of release ordered by the court.

L. The pretrial officer shall base his or her review on the UOR code assigned by law enforcement, unless the offense charged is a DUI, in which case the pretrial officer shall base his or her review on the CourtNet or Department of Transportation (DOT) record.

M. No defendant shall be held in custody for failure to pay the \$25.00 bond filing fee required under KRS 64.005.

Section 4. Local Deviation

By local rule, judges may order only the following deviation from the Schedule:

Local jurisdictions may order the Schedule's expansion to include certain, non-violent/non-sexual, Class D felony charges, with the exception of the charge of Fugitive from Justice.