

# Supreme Court of Kentucky

2017-20

ORDER

**IN RE: 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 either (1) pose

a high risk of flight or failure to appear or (2) pose a high risk of anticipated criminal conduct or new criminal activity.

- (c) "Low risk defendant" means a defendant who has been determined through the pretrial risk assessment to either (1) pose a low risk of flight or failure to appear or (2) pose a low risk of anticipated criminal conduct or new criminal activity.
- (d) "Moderate risk defendant" means a defendant who has been determined through the pretrial risk assessment to either (1) pose a moderate risk of flight or failure to appear or (2) pose a moderate risk of anticipated criminal conduct or new criminal activity.
- (e) "Monitoring level" means strategies and frequency of contact with defendants 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.
- (f) "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.
- (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).

### **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 monitoring, drawing upon information obtained through the interview of the defendant, its investigation, the risk assessment, and the seriousness of the offense charged. Pretrial Services will present to the court a recommendation for pretrial release and monitoring where appropriate.
- (b) The interview, investigation and assessment may include, but are not limited to, information such as:
  - (1) the defendant's age, financial resources, 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) whether there are specific circumstances that may make the defendant an appropriate subject for conditional release and monitoring options,

#### **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 24 hours of the defendant's incarceration. Failure by Pretrial Services to present this information to the court within 24 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.

#### **Section 5. Low risk defendants**

Pursuant to KRS 431.066(2), the court shall determine, based upon the pretrial risk assessment and the factors set forth in KRS 431.525, whether the defendant is a flight risk, is unlikely to appear for trial, or is likely to be a danger to the public if released.

If, based upon the pretrial risk assessment, the court determines that a defendant poses a low risk of (1) flight or failure to appear or (2)

anticipated criminal conduct or new criminal activity, 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 least restrictive conditions as the court may order.

#### **Section 6. Moderate risk defendants**

Pursuant to KRS 431.066(2), the court shall determine, based upon the pretrial risk assessment and the factors set forth in KRS 431.525, whether the defendant is a flight risk, is unlikely to appear for trial, or is likely to be a danger to the public if released.

If, based upon the pretrial risk assessment, the court determines that a defendant poses a moderate risk of (1) flight or failure to appear or (2) anticipated criminal conduct or new criminal activity, 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 least restrictive conditions as the court may order.

#### **Section 7. High risk defendants**

Pursuant to KRS 431.066(2), the court shall determine, based upon the pretrial risk assessment and the factors set forth in KRS 431.525, whether the defendant is a flight risk, is unlikely to appear for trial, or is likely to be a danger to the public if released.

If, based upon the pretrial risk assessment, a defendant is determined to pose a high risk of (1) flight or failure to appear or (2) anticipated criminal conduct or new criminal activity, 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 monitoring level sufficient to mitigate risk.

#### **Section 8. Conditions of release**

- (a) If the court imposes conditions of release, the court shall consider imposing the least restrictive release conditions reasonably necessary to assure 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 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.

### **Section 9. 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.
- (c) 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 10. Court's discretion**

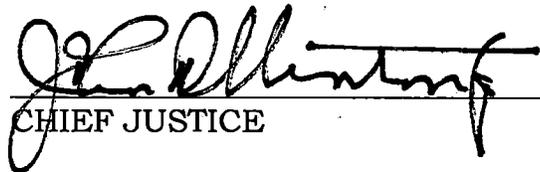
Nothing in these Guidelines shall be construed to limit the court's discretion to grant or deny pretrial release to a defendant.

**Section 11. 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 6th day of December 2017.

  
CHIEF JUSTICE