# AGENDA

## COLORADO SUPREME COURT ADVISORY COMMITTEE ON RULES OF CRIMINAL PROCEDURE

THIS MEETING WILL BE HELD REMOTELY VIA WEBEX
Friday, January 19, 2024, 12:45 p.m.
Ralph L. Carr Colorado Judicial Center
2 E. 14th Ave., Denver, CO 80203
Fourth Floor, Supreme Court Conference Room

I. Call to Order

II. Approval of Minutes from the September 15, 2023 Meeting [Pages 2 to 4]

III. Announcements from the Chair

IV. Business

A. Gender Neutral Language in Rules [Pages 5 to 10]

B. Legislative Subcommittees

a. SB23-254 (Abe Hutt, Judge VanGilder, and Christian Champagne)

b. HB23-1151 (Judge Gerdes, Kevin McGreevy, and Johanna Coats) [Pages 11 to 22]

c. HB23-1182 (Judge Nichols, Sheryl Berry, and Magdalena Rosa)

d. HB23-1187 (Matt Holman, Judge Vigil, and Karen Taylor)

C. Rules 37 and 37.1 – Proposal from SCAO (Judge Harris and Johanna Coats)

V. Future Meetings: April 19, July 19, and October 18

VI. Adjourn

**NOTICE**
**ANYONE WISHING TO INQUIRE ABOUT AN AGENDA ITEM MAY CONTACT THE CHAIRPERSON OF THE COMMITTEE, JUDGE ELIZABETH L. HARRIS, AT 720-625-5330.**

**COLORADO SUPREME COURT**
**ADVISORY COMMITTEE ON THE RULES OF CRIMINAL PROCEDURE**
**Minutes of Meeting**
**Friday, September 15, 2023**

A quorum being present, the Colorado Supreme Court's Advisory Committee on the Rules of Criminal Procedure was called to order by Judge Elizabeth Harris at 3:00 p.m. in the Supreme Court Conference Room. Members present at or excused from the meeting were:

| Name | Present | Excused |
|---|---|---|
| Judge Elizabeth Harris, Chair | X | |
| Sheryl Berry | | X |
| Christian Champagne | X | |
| Johanna Coats | X | |
| Judge Kandace Gerdes | X | |
| Judge Shelley Gilman | X | |
| Matt Holman | X | |
| Abe Hutt | X | |
| Judge Chelsea Malone | X | |
| Kevin McGreevy | X | |
| Judge Dana Nichols | X | |
| Magdalena Rosa | X | |
| Karen Taylor | X | |
| Judge Lindsay VanGilder | X | |
| Judge Vincente Vigil | X | |
| **Non-Voting Participant** | | |
| Karen Yacuzzo | X | |

## I. Attachments & Handouts

**A.** September 15, 2023 agenda
**B.** April 21, 2023 minutes

## II. Approval of Minutes

The April 21, 2023 minutes were approved as submitted.

## III. Announcements from the Chair

Judge Harris welcomed new members Judge Lindsay VanGilder, Johanna Coats, and Magdalena Rosa. This was Judge Gilman's last meeting, and Judge Harris thanked her for her many years of service to the Committee.

## IV. Business

### A. Committee Protocols (Judge Harris)

The Committee first discussed whether to keep the meetings closed to the public. The Committee decided to maintain its policy of not opening meetings to the general

public, primarily because Committee members believed that holding public meetings would have a chilling effect on the Committee's discussions.

A member informed the Committee that the press reached out to him directly for a comment on an issue, and he wondered if there is a standard protocol for how to handle this situation. Members discussed the issue, but the Committee chose not to establish specific guidelines for members speaking to the press. Judge Harris noted that the Public Information Office might be a helpful resource if members are being contacted by the press for comment on particular issues.

The Committee then discussed preferred meeting dates and times and decided to maintain the current schedule of meetings occurring quarterly on Fridays at 12:45 pm. The 2024 meeting dates will be January 19, April 19, July 19, and October 18.

**B. HB 23-1187 (Legislative Subcommittee)**

Matt Holman discussed the Subcommittee's memo and concluded that five bills may impact the criminal rules. Judge Harris recruited volunteers to serve on subcommittees to consider any necessary rule changes.

SB23-254, concerning warrants, no-knock warrants, and warrantless entries, may affect Rule 41. Abe Hutt, Judge VanGilder, and Christian Champagne will consider whether to recommend any change to the rule.

HB23-1151, concerning 48-hour bond hearings, may impact Rule 5. Judge Gerdes, Kevin McGreevy, and Johanna Coats will consider whether to recommend any change to the rule.

HB23-1182 involves a requirement of remote public access to criminal court proceedings. Judge Nichols, Sheryl Berry, and Magdalena Rosa will consider whether this bill will require changes to any of the criminal rules. A member noted that a Chief Justice Directive applies to this issue.

HB23-1187 concerns alternatives in the criminal justice system related to pregnant and postpartum persons. Matt Holman, Judge Vigil, and Karen Taylor will consider whether this bill will require changes to any rules.

HB23-1292, concerning modification of crimes of violence and habitual offender sentences, will be considered by a subcommittee exploring possible changes to Rule 35. There are currently several cases pending in the Colorado Supreme Court that involve Rule 35; once those cases are decided, the Committee can consider this bill and any other potential amendments to Rule 35 at the same time.

**C. Crim. P. 35 (Judge Harris)**

The Committee will wait for pending cases to be resolved before considering changes to Rule 35.

**D. Changes to Crim. P. 37 and 37.1 Following Changes to C.A.R. 10**
A group of clerks proposes to modify two criminal procedure rules so that the terminology will be consistent with that used in C.A.R. 10 regarding electronic transmissions. Further, the proposed changes aim to accurately reflect the record designation and certification processes currently being utilized. One member noted that further context from the clerks would be helpful. Judge Harris and Johanna Coats will work on edits to the rules.

The committee adjourned at 4:24 pm.

## V. Future Meetings

January 19, April 19, July 19, and October 18

# MEMORANDUM

**TO:** Judge Jerry N. Jones, Chair of the Colorado Civil Rules Committee

**FROM:** Subcommittee Re Gendered Pronouns

**DATE:** July 31, 2023

**RE:** Request for Guidance on Next Steps Re Gendered Pronouns

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The Colorado Civil Rules Committee's Subcommittee Re Gendered Pronouns is at a point in our work where we would like to obtain your guidance on how best to proceed. The Subcommittee has arrived at the following two "best fix" approaches to accomplish the universal revision of all gendered pronouns currently set forth in the Colorado Rules of Civil Procedure:

## FIRST APPROACH: FEDERAL RULES COMMITTEE APPROACH

The first approach generally tracks the fix adopted by the Federal Civil Rules Committee. Specifically, in referring to the generic term "party" they appear to default to "it." For example:

> Fed. R. Civ. P. 4(i)(4) *Extending Time.*
>
> The court must allow a *party* a reasonable time to cure *its* failure to:….
>
> Fed. R. Civ. P. 8(b)(1) *In General.*
>
> In responding to a pleading, a *party* must: (A) state in short and and plain terms *its* defenses to each claim asserted against *it*; and (B) admit or deny the allegation asserted against *it* by an opposing *party*.

When referring to less generic terms like "plaintiff" or "third-party plaintiff" they appear to use either "it" or to repeat the same less generic terms "plaintiff" and "third-party plaintiff," depending on which is most clear for the particular provision. For example:

> Fed. R. Civ. P. 4(a)(1)(E) *Contents.*
>
> A summons must…notify the *defendant* that a failure to appear and defend will result in a default judgment against the *defendant* for the relief demanded in the complaint;

Fed. R. Civ. P. 14(a)(1) *Timing of the Summons and Complaint.*

> A defending party may, as a *third-party plaintiff*, serve a summons and complaint on a nonparty who is or may be liable to *it* for all or part of the claim against *it*. But the *third-party plaintiff* must, by motion, obtain the court's leave if it files the third-party complaint more than 14 days after serving *its* original answer.

This first approach would afford the subcommittee some flexibility in revising the gendered pronouns rather than universally adopt the non-gendered catch all "it," for purposes of clarity. Here are a couple examples of how this first fix would apply to the Colorado Rules of Civil Procedure, showing the revision in redline format:

C.R.C.P. 14(a) *When Defendant May Bring in Third Party.*

> At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to ~~him~~it for all or part of the plaintiff's claim against ~~him~~it. The third-party plaintiff need not obtain leave to make the service if ~~he~~ it files the third-party complaint not later than 14 days after ~~he~~it serves his original answer. Otherwise ~~he~~the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make ~~his~~its defenses to the third party plaintiff's claim as provided in Rule 12 and ~~his~~ its counterclaim against the third-party plaintiff and cross claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert ~~his~~ its defenses as provided in Rule 12 and its~~his~~ counterclaim and cross claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this Rule against any person not a party to the action who is or may be liable to it~~him~~ for all or part of the claim made in the action against the third-party defendant.

C.R.C.P. 14(b) *When Plaintiff May Bring in Third Party.*

> When a counterclaim is asserted against a plaintiff, ~~he~~the plaintiff may cause a third party to be brought in under circumstances which under this Rule would entitle a defendant to do so.

C.R.C.P. 8(b) *Defenses; Forms of Denials*.

A party shall state in short and plain terms ~~his~~its defenses to each claim asserted and shall admit or deny the averments of the adverse party. If ~~he~~a party is without knowledge or information sufficient to form a belief as to the truth of an averment, ~~he~~it shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, ~~he~~the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, ~~he~~the pleader may make ~~his~~its denials as specific denials of designated averments or paragraphs, or ~~he~~the pleader may generally deny all the averments except such designated averments or paragraphs as ~~he~~it expressly admits; but, when ~~he~~the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, it~~he~~ may do so by general denial subject to the obligations set forth in Rule 11.

**SECOND APPROACH: WA/MN RULES COMMITTEE APPROACH**

The second approach generally tracks what the Civil Rules Committees of states like Washington and Minnesota have adopted. Generally, they do not use "it" or "its." Rather, when referring to less generic terms like "plaintiff" or "third-party plaintiff" they appear to repeat the same less generic terms "plaintiff" and "third-party plaintiff." For example:

Wash. CR 8(b). *Defenses; form of denials.*

A *party* shall state in short and plain terms the defenses to each claim asserted and shall admit or deny the averments upon which the *adverse party* relies. If a *party* is without knowledge or information sufficient to form a belief as to the truth of an averment, the *party* shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a *pleader* intends in good faith to deny only a part or a qualification of an averment, the *pleader* shall specify so much of it as is true and material and shall deny only the remainder. Unless the *pleader* intends in good faith to controvert all the averments of the preceding pleading, the *pleader* may make denials as specific denials of designated averments or paragraphs, or the *pleader* may generally deny all the averments except such designated averments or paragraphs as the *pleader* expressly admits; but, when the *pleader* does so intend to controvert all its averments, the *pleader* may do so by general denial subject to the obligations set forth in rule 11.

Wash. CR 14(a)[1] *When defendant may bring in third party.*

At any time after commencement of the action a *defending party*, as a *third party plaintiff*, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the *defending party* for all or part of the *plaintiff 's* claim against the *defending party*. The *third party plaintiff* need not obtain leave to make the service if the *third party plaintiff* files the third party complaint not later than 10 days after the *third party plaintiff* serves an original answer. Otherwise the *third party plaintiff* must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third party complaint, hereinafter called the *third party defendant*, shall make defenses to the *third party plaintiff 's* claim as provided in rule 12 and ***his*** counterclaims against the *third party plaintiff* and cross claims against other *third party defendants* as provided in rule 13. The *third party defendant* may assert against the *plaintiff* any defenses which the *third party plaintiff* has to the *plaintiff 's* claim. The *third party defendant* may also assert any claim against the *plaintiff* arising out of the transaction or occurrence that is the subject matter of the *plaintiff 's* claim against the *third party plaintiff*. The *plaintiff* may assert any claim against the *third party defendant* arising out of the transaction or occurrence that is the subject matter of the *plaintiff 's* claim against the *third party plaintiff*, and the *third party defendant* thereupon shall assert defenses as provided in rule 12 and counterclaims and cross claims as provided in rule 13. Any party may move to strike the third party claim, or for its severance or separate trial. A *third party defendant* may proceed under this rule against any person not a party to the action who is or may be liable to the *third party defendant* for all or part of the claim made in the action against the *third party defendant*.

Minn. R. Civ. P. 8.02 *Defenses; Form of Denials.*

A *party* shall state in short and plain terms any defenses to each claim asserted and shall admit or deny the averments upon which the *adverse party* relies. If a *party* is without knowledge or information sufficient to form a belief as to the truth of an averment, the *party* shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. A *pleader* who intends in good faith to deny only a part or to qualify an averment shall specify so much of it as is true and material and shall deny only the remainder. Unless the *pleader* intends in good faith to controvert all the averments of the preceding pleading, the *pleader* may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the *pleader* expressly admits. However, a *pleader* who intends to

[1] The Subcommittee's assessment is that Rules such as 14 and 19 will be among the most challenging to revise. While this second approach results in some considerable verbosity in Rule 14, the approach is unlikely have the same result in the majority of the rules.

controvert all its averments may do so by general denial subject to the obligations set forth in Rule 11.

This second approach avoids the awkward, if not insensitive, use of "it" to refer back to people, but may perhaps be less clear and wordy. Here are a couple examples of how this second fix would apply to the Colorado Rules of Civil Procedure, showing the revision in redline format:

C.R.C.P. 14(a) *When Defendant May Bring in Third Party.*

At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to ~~him~~the defending party for all or part of the plaintiff's claim against ~~him~~the defending party. The third-party plaintiff need not obtain leave to make the service if ~~he~~the third-party plaintiff ~~-~~ files the third-party complaint not later than 14 days after ~~he~~the third-party plaintiff serves ~~his~~the third-party plaintiff's original answer. Otherwise ~~he~~the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall *make* ~~his~~ the third-party defendant's defenses to the third-party plaintiff's claim as provided in Rule 12 and ~~his~~ the third-party defendant's counterclaim against the third-party plaintiff and cross claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall *assert* ~~his~~ the third-party defendant's defenses as provided in Rule 12 and ~~his~~the third-party defendant's counterclaim and cross claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this Rule against any person not a party to the action who is or may be liable to ~~him~~the third-party defendant for all or part of the claim made in the action against the third-party defendant.

C.R.C.P. 14(b) *When Plaintiff May Bring in Third Party.*

When a counterclaim is asserted against a plaintiff, ~~he~~the plaintiff may cause a third party to be brought in under circumstances which under this Rule would entitle a defendant to do so.

C.R.C.P. 8(b) *Defenses; Forms of Denials*.

> A party shall state in short and plain terms ~~his~~the party's defenses to each claim asserted and shall admit or deny the averments of the adverse party. If ~~he~~a party is without knowledge or information sufficient to form a belief as to the truth of an averment, ~~he~~the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, ~~he~~the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, ~~he~~the pleader may make ~~his~~the pleader's denials as specific denials of designated averments or paragraphs, or ~~he~~the pleader may generally deny all the averments except such designated averments or paragraphs as ~~he~~the pleader expressly admits; but, when ~~he~~the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, ~~he~~the pleader may do so by general denial subject to the obligations set forth in Rule 11.

## GUIDANCE REQUESTED

As between these two "best fix" options and the process moving forward, the Subcommittee would appreciate your direction as to the following:

1. Would you like the Subcommittee to first present these two "best fix" approaches through the foregoing summary examples to the broader Committee for their consideration and vote? After which vote, the Subcommittee would proceed to revise the entirety of the C.R.C.P. per the selected approach, and ultimately present to the Committee the fully revised set of the C.R.C.P. for their review and approval. This would essentially be a two vote / two meeting process.

2. Or, would you like the Subcommittee to select from the two "best fix" approaches (with input from you and others, if any, you deem important to include in that initial selection), and proceed to revise the entirety of the C.R.C.P., after which the Subcommittee would present to the Committee the fully revised set of the C.R.C.P. for their review and approval. This would essentially be a one vote / one meeting process.

3. Also, are other Committees considering similar revisions to other sets of Colorado rules or forms, in addition to the C.R.C.P.? If so, are other Committees following one of these approaches or a different approach? And before the Committee invests substantial effort in these revisions, should the Committee seek guidance as to whether any uniform standards will be articulated for revisions to court rules generally?


HOUSE BILL 23-1151

BY REPRESENTATIVE(S) Woodrow and Bockenfeld, Epps, Bacon, Boesenecker, deGruy Kennedy, Dickson, English, Garcia, Gonzales-Gutierrez, Hamrick, Jodeh, Joseph, Kipp, Lindsay, Lindstedt, Mabrey, Marshall, Michaelson Jenet, Ricks, Sirota, Soper, Story, Titone, Valdez, Velasco, Vigil, Weissman, Bird, Brown, Duran, Froelich, Herod, Lieder, Martinez, Sharbini, Snyder, Young;
also SENATOR(S) Rodriguez and Gardner, Bridges, Priola.

CONCERNING CLARIFICATIONS TO THE REQUIREMENTS THAT THE COURT CONDUCT A BOND HEARING WITHIN FORTY-EIGHT HOURS AFTER AN INDIVIDUAL IS PLACED IN JAIL.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1. Legislative declaration.** (1) The general assembly finds and declares that:

(a) It is the public policy of the state of Colorado to ensure consistent statewide access to basic due process in criminal proceedings, including bond setting;

(b) The general assembly passed House Bill 21-1280 to require that

*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

Coloradans receive an individualized bond hearing in front of a judge within forty-eight hours of arrest, and to end wide variations in prompt bond hearings across the state;

(c) Some judicial districts consistently follow the requirements of House Bill 21-1280, while others apply the provisions of House Bill 21-1280 in only limited cases;

(d) This jurisdictional split causes continued inconsistencies in access to basic due process across the state and thwarts the legislative intent of House Bill 21-1280; and

(e) Inconsistency by Colorado courts in provision of basic due process is unfair and erodes public confidence in the court system.

(2) (a) Therefore, the general assembly enacts House Bill 23-1151 to clarify and confirm the mandates of House Bill 21-1280; and

(b) Further urges the Colorado supreme court to adopt policies to ensure statewide uniformity in implementation of the requirements of House Bill 23-1151 and House Bill 21-1280.

**SECTION 2.** In Colorado Revised Statutes, 13-10-111.5, **amend** (2) as follows:

**13-10-111.5. Notice to municipal courts of municipal holds.** (2) Once a municipal court receives notice that the defendant is being held solely on the basis of a municipal hold, the municipal court shall hold a hearing within forty-eight hours after the receipt of such a notice. The county sheriff shall make the in-custody defendant available to appear in a timely manner before a municipal judge for a hearing required by this subsection (2) at the date and time mutually agreed to by the county sheriff and municipal court. This subsection (2) must not be construed to require the county sheriff to transport the in-custody defendant to the municipal court. It is not a violation of this section if a bond hearing is not held within forty-eight hours when the delay is caused by circumstances in which the defendant refuses to attend court, is unable to attend court due to ~~a debilitating physical ailment, or is unable to proceed due to drug or alcohol use or mental illness~~ DRUG OR ALCOHOL USE, A SERIOUS MEDICAL OR BEHAVIORAL HEALTH EMERGENCY, or when the delay is caused by an

emergency that requires the court to close. WHEN THE DEFENDANT IS UNABLE TO ATTEND COURT, THE SHERIFF SHALL PROVIDE THE COURT WITH A LIST OF PEOPLE SUBJECT TO THIS SECTION WHO DID NOT TIMELY ATTEND COURT, THE DATE OF THE PERSON'S ARREST, AND THE LOCATION WHERE THE PERSON IS IN CUSTODY. THE SHERIFF SHALL DOCUMENT THE LENGTH OF THE DELAY, THE REASON FOR THE DELAY, AND THE EFFORTS TO ABATE THE EMERGENCY. AS SOON AS THE EMERGENCY HAS SUFFICIENTLY ABATED, THE SHERIFF SHALL MAKE THE IN-CUSTODY DEFENDANT AVAILABLE TO APPEAR BEFORE THE MUNICIPAL COURT AT THE NEXT SCHEDULED BOND HEARING. Use of audiovisual conferencing technology is permissible to expedite the hearing. When high-speed internet access is unavailable, making audiovisual conferencing impossible, the court may conduct the hearing telephonically.

**SECTION 3.** In Colorado Revised Statutes, 16-4-102, **amend** (2)(a)(I) and (2)(a)(II); and **add** (2)(a)(I.5) and (2)(a)(IV) as follows:

**16-4-102. Right to bail - before conviction.** (2) (a) (I) The arresting jurisdiction shall bring an in-custody arrestee before a court for bond setting as soon as practicable, but no later than forty-eight hours after an arrestee arrives at a jail or holding facility. A judge, magistrate, or bond hearing officer shall hold a hearing with an in-custody arrestee at which the court shall enter an individualized bond order as soon as practicable, but no later than forty-eight hours after an arrestee arrives at a jail or holding facility. Notwithstanding the requirement for bond setting within forty-eight hours, it is not a violation of this section if a bond hearing is not held within forty-eight hours when the delay is caused by an emergency that requires the court to close or circumstances in which the ~~defendant~~ IN-CUSTODY ARRESTEE refuses to attend court, OR is unable to attend ~~court~~ due to ~~a debilitating physical ailment, or is unable to proceed due to drug or alcohol use or mental illness~~ DRUG OR ALCOHOL USE OR A SERIOUS MEDICAL OR BEHAVIORAL HEALTH EMERGENCY. IN SUCH INSTANCES, THE SHERIFF SHALL PROVIDE THE PUBLIC DEFENDER'S OFFICE WITH A LIST OF PEOPLE SUBJECT TO THIS SECTION WHO DID NOT TIMELY ATTEND COURT, THE DATE OF THE PERSON'S ARREST, AND THE LOCATION WHERE THE PERSON IS IN CUSTODY. THE SHERIFF SHALL DOCUMENT THE LENGTH OF THE DELAY, THE REASON FOR THE DELAY, AND THE EFFORTS TO ABATE THE EMERGENCY. AS SOON AS THE EMERGENCY HAS SUFFICIENTLY ABATED, THE SHERIFF SHALL BRING THE IN-CUSTODY ARRESTEE BEFORE A JUDGE AT THE NEXT SCHEDULED BOND HEARING. Use of audiovisual conferencing technology is permissible to

expedite bond setting hearings, including prior to extradition of the ~~defendant~~ IN-CUSTODY ARRESTEE from one county to another in the state of Colorado. When high-speed internet access is unavailable, making audiovisual conferencing impossible, the court may conduct the hearing telephonically.

(I.5) THIS SUBSECTION (2)(a) REQUIRES AN INDIVIDUALIZED BOND HEARING AT WHICH THE IN-CUSTODY ARRESTEE IS PRESENT, REGARDLESS OF WHETHER:

(A) AN IN-CUSTODY ARRESTEE IS HELD IN CUSTODY IN A JURISDICTION OTHER THAN THE ONE THAT ISSUED THE ARREST WARRANT;

(B) MONEY BOND WITH A MONETARY CONDITION WAS PREVIOUSLY SET EX PARTE; OR

(C) THE IN-CUSTODY ARRESTEE DID NOT APPEAR FOR A FIRST APPEARANCE.

(II) This subsection (2)(a) applies only to the initial bond setting AT AN INDIVIDUALIZED BOND HEARING by a judge, JUDICIAL OFFICER, OR BOND HEARING OFFICER.

(IV) FOR AN IN-CUSTODY ARRESTEE WHO IS NOT SUBJECT TO THIS SUBSECTION (2)(a), NOTHING IN THIS SECTION EXTENDS OR JUSTIFIES DELAYS IN TIMELY ADVISEMENT OR BOND HEARINGS PURSUANT TO OTHER LAWS OR RULES.

**SECTION 4. Effective date.** This act takes effect October 1, 2023.

**SECTION 5. Safety clause.** The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Steve Fenberg
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED Thursday April 20th 2023 at 1:30 pm
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

TO: Judge Harris and the Colorado Criminal Procedure Rules Committee

FROM: Judge Gerdes, Johanna Coats, and Kevin McGreevy

Date: January 11, 2024

RE: Amendments to Criminal Procedure Rules Regarding Bail

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**Issue:**

Governor Polis signed HB 23-1151 into law effective October 1, 2023. Current law requires an individual who is in jail to be brought before a judge for a bond hearing within 48 hours of arriving at the jail. Our rules often use the term, "without unnecessary delay."

The Act clarifies the circumstances when the 48-hour requirement does not apply by setting forth certain exceptions, as well as Sheriff documentation requirements. The Act also clarifies that the 48-hour requirement applies regardless of whether: (1) the individual is held in custody in a jurisdiction other than the one that issues the arrest warrant; (2) money bond was previously set *ex parte*; or (3) the in-custody arrestee did not appear for a first appearance. Attached to this memo is the Act signed by Gov. Polis.

**Rules Potentially Implicated for Revision:**

The following Colorado Rules of Criminal Procedure are potentially impacted:

Rule 4(b)(1)(II): Command that the defendant be arrested and brought without unnecessary delay before the nearest available judge of a county or district court.

Rule 4.1(d) - Arrest Followed by a Complaint: If a peace officer makes an arrest without a warrant of a person for a misdemeanor or a petty offense, the arrested person shall be taken without unnecessary delay before the nearest available county or district judge. Thereafter, a complaint shall be filed immediately in the county court having jurisdiction of the offense and a copy thereof given to the defendant at or before the time he is arraigned. The provisions of this Rule are subject to the right of the arresting authority to release the arrested person pursuant to section 16-3-105.

Rule 4.2 – Arrest Warrant Without Information, Felony Complaint, or Complaint: If a warrant for arrest is sought prior to the filing of an information, felony complaint, or complaint, such warrant shall issue only on affidavit sworn to or affirmed before the judge, or a notary public and determined by a judge to relate facts sufficient to establish probable cause that an offense has been committed and probable cause that a particular person committed that offense. A warrant may be obtained by facsimile transmission (FAX) or electronic transmission pursuant to procedures set forth in Rule 41, in which event the procedure in Rule 41 shall be followed. The court shall issue a warrant for the arrest of such person commanding any peace officer to arrest the

person so named and to take the person without unnecessary delay before the nearest judge of a court of record.

Rule 5(a)(1) - Procedure Following Arrest: If a peace officer or any other person makes an arrest, either with or without a warrant, the arrested person shall be taken without unnecessary delay before the nearest available county or district court. Thereafter, a felony complaint, information, or indictment shall be filed, if it has not already been filed, without unnecessary delay in the proper court and a copy thereof given to the defendant.

Rule 5(a)(3) - Appearance in the Court Not Issuing the Warrant: If the defendant is taken before a court which did not issue the arrest warrant, the court shall inform the defendant of the matters set out in subsection (a)(2) of this Rule and, allowing time for travel, set bail returnable not less than 14 days thereafter before the court which issued the arrest warrant, and shall transmit forthwith all papers in the case to the court which issued the arrest warrant. In the event the defendant does not make bail within forty-eight hours, the sheriff of the county in which the arrest warrant was issued shall return the defendant to the court which issued the warrant.

Rule 5(c)(1) – Procedure Following Arrest: If a peace officer or any other person makes an arrest, either with or without a warrant, the arrested person shall be taken without unnecessary delay before the nearest available county court. Thereafter a complaint or summons and complaint shall be filed, if it has not already been filed, immediately in the proper court and a copy thereof given to the defendant or before arraignment. Trial may be held forthwith if the court calendar permits, immediate trial appears proper, and the parties do not request a continuance for good cause. Otherwise the case shall be set for trial as soon as possible.

Rule 5(c)(3) – Appearance in the County Court Not Issuing the Warrant: If the defendant is taken before a county court which did not issue the arrest warrant, the court shall inform the defendant of the matters set out in subsection (a)(2) (I through VII and IX) of this Rule and, allowing time for travel, set bail returnable not less than 14 days thereafter before the court which issued the arrest warrant, and shall transmit forthwith a transcript of the proceedings and all papers in the case to the court which issued the arrest warrant. In the event the defendant does not make bail within forty-eight hours, the sheriff of the county in which the arrest warrant was issued shall return the defendant to the court which issued the warrant.

Rule 9(c)(1) – Execution of Service: The warrant shall be executed or the summons served as provided in Rule 4(c). The officer executing the warrant shall bring the arrested person before the court without unnecessary delay, or for the purposes of admission to bail, before the clerk of the court, the sheriff of the county where the arrest occurs, or any other officer authorized to admit to bail.

**Options:**

1. One option is to not amend any of the rules concerning this legislation. To articulate the exceptions to the 48-hour requirement would be overly cumbersome, and the rules are not necessarily in direct conflict to the statute.

2. Amend the rules to specify that the 48-hour requirement applies and clarify that there are statutory exceptions to that rule. In addition, re-word a few sentences that clarify the setting of bail should happen within 48 hours, even in circumstances where the arrest is executed in a jurisdiction that did not issue the underlying warrant.

*Our subcommittee concluded that some Rule amendments would improve the clarity of the issue. We also agreed, though, that attempting to capture the whole of the new legislation in the Rules would be too cumbersome. So, we declined the notion of "do nothing" in favor of option 2.*

**Discussion**:

Our proposal is, in certain instances, to replace the vague language of "without unnecessary delay" with "no later than 48 hours … unless a statutory exception applies." We also made slight changes to two paragraphs regarding the setting of bail.

Our intent was to reduce any misperception that a jurisdiction that did not issue a warrant was prohibited (or allowed to abdicate) setting bail.

- In two instances, we replaced the heading of "Appearance in [court] Not Issuing the Warrant" with "Setting of Bail Upon Appearance in Court", and added a first line of: "The court shall hold an individualized bail hearing."

- In Rule 5(a)(3) and 5(c)(3) we modified the subsections to identify that the court may be one that did not issue the warrant, but our view is that highlighting the need to set bail is one of the points the new legislation is hoping to address.

We all agreed that the following Rules should be amended:

Rule 4.1(d),
Rule 5(a)(1),
Rule 5(a)(3),
Rule 5(c)(1),
Rule 5(c)(3), and
Rule 9(c)(1).

We had slight disagreement on whether or not to amend Rules 4(b)(1)(II) and 4.2. Because these two Rules use the phrase "take that person without unnecessary delay before the nearest court…" we discussed amending the Rules to address how the warrant should be enforced.

- In favor of amending the language of "without unnecessary delay" to "within 48 hours unless a statutory exception applies" would re-enforce what the law is, and communicates to the judge signing off on the warrant, and the sheriff or law enforcement officer executing the warrant what the requirement is. Furthermore, we appreciated that the language in the warrant is then consistent between the direction in the warrant, the legislation, and the rules.

- In favor of NOT amending these two rules is that the legislation does not address the form on the warrant, the language of "without unnecessary delay" does not contradict the statute, and warrants are likely formulaic, which may be a challenge to amend. We were concerned over unforeseen consequences with an amendment that is not absolutely necessary.

While the sub-committee was split on this issue, we all saw some merit to bringing the issue to the attention of the Committee.

**Proposals:**

Below is the sub-committee's proposed amendments to the Rules. If there is a split decision, the two alternatives are in alternating highlighted colors.

**Rule 4: Warrant or Summons Upon Felony Complaint**

**(b) Form.**

(1) **Warrant.** The arrest warrant shall be a written order issued by a judge of a court of record directed to any peace officer and shall:

(I) State the defendant's name or if that is unknown, any name or description by which the defendant can be identified with reasonable certainty;

(II) Command that the defendant be arrested and brought without unnecessary delay before the nearest available judge of a county or district court;

(II) Command that the defendant be arrested and brought before the nearest available judge of a county or district court within 48 hours unless a statutory exception applies.

(III) Identify the nature of the offense;

(IV) Have endorsed upon it the amount of bail if the offense is bailable; and

(V) Be signed by the issuing county judge.

**Rule 4.1. County Court Procedure--Misdemeanor and Petty Offense--Warrant or Summons Upon Complaint**

**(d) Arrest Followed by a Complaint.** If a peace officer makes an arrest without a warrant of a person for a misdemeanor or a petty offense, the arrested person shall be taken ~~without unnecessary delay~~ before the nearest available county or district judge no later than 48 hours after the arrested person arrives at the jail or holding facility, unless a statutory exception applies. Thereafter, a complaint shall be filed immediately in the county court having jurisdiction of the offense and a copy thereof given to the defendant at or before the time he is arraigned. The provisions of this Rule are subject to the right of the arresting authority to release the arrested person pursuant to section 16-3-105.

**Rule 4.2. Arrest Warrant Without Information, Felony Complaint, or Complaint**

If a warrant for arrest is sought prior to the filing of an information, felony complaint, or complaint, such warrant shall issue only on affidavit sworn to or affirmed before the judge, or a notary public and determined by a judge to relate facts sufficient to establish probable cause that an offense has been committed and probable cause that a particular person committed that offense. A warrant may be obtained by facsimile transmission (FAX) or electronic transmission pursuant to procedures set forth in Rule 41, in which event the procedure in Rule 41 shall be followed. The court shall issue a warrant for the arrest of such person commanding any peace officer to arrest the person so named and to take the person without unnecessary delay before the nearest judge of a court of record.

The court shall issue a warrant for the arrest of such person commanding any peace officer to arrest the person so named and to take the before the nearest available judge of a court of record within 48 hours unless a statutory exception applies.

**Rule 5. Preliminary Proceedings**

**(a) Felony Proceedings.**

(1) **Procedure Following Arrest.** If a peace officer or any other person makes an arrest, either with or without a warrant, the arrested person shall be taken ~~without unnecessary delay~~ before the nearest available county or district court no later than 48 hours after the arrested person arrives at the jail or holding facility, unless a statutory exception applies. Thereafter, a felony complaint, information, or indictment shall be filed, if it has not already been filed, without unnecessary delay in the proper court and a copy thereof given to the defendant.

(2) **Appearance Before the Court.** At the first appearance of the defendant in court, it is the duty of the court to inform the defendant and make certain that the defendant understands the following:

(I) The defendant need make no statement and any statement made can and may be used against the defendant.

(II) The right to counsel;

(III) If indigent, the defendant has the right to request the appointment of counsel or consult with the public defender before any further proceedings are held;

(IV) Any plea the defendant makes must be voluntary and not the result of undue influence or coercion;

(V) The right to bail, if the offense is bailable, and the amount of bail that has been set by the court;

(VI) The nature of the charges;

(VII) The right to a jury trial;

(VIII) The right to demand and receive a preliminary hearing within a reasonable time to determine whether probable cause exists to believe that the offense charged was committed by the defendant.

(IX) If currently serving in the United States armed forces or if a veteran of such forces, the defendant may be entitled to receive mental health treatment, substance use disorder treatment, or other services as a veteran.

(3) ~~Appearance in the Court Not Issuing the Warrant~~ **Setting of Bail Upon Appearance in Court.** The court shall hold an individualized bail hearing. If the defendant is taken before a court which did not issue the arrest warrant, the court shall inform the defendant of the matters set out in subsection (a)(2) of this Rule and, allowing time for travel, set bail returnable not less than 14 days thereafter before the court which issued the arrest warrant, and shall transmit forthwith all papers in the case to the court which issued the arrest warrant. In the event the defendant does not make bail within forty-eight hours, the sheriff of the county in which the arrest warrant was issued shall return the defendant to the court which issued the warrant.

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**(c) Misdemeanor and Petty Offense Proceedings.**

(1) **Procedure Following Arrest.** If a peace officer or any other person makes an arrest, either with or without a warrant, the arrested person shall be taken ~~without unnecessary delay~~ before the nearest available county court no later than 48 hours after the arrested person arrives at the jail or holding facility, unless a statutory exception applies. Thereafter a complaint or summons and complaint shall be filed, if it has not already been filed, immediately in the proper court and a copy thereof given to the defendant at or before arraignment. Trial may be held forthwith if the court calendar permits, immediate trial appears proper, and the parties do not request a continuance for good cause. Otherwise the case shall be set for trial as soon as possible.

(2) **Appearance Before the Court.** At the first appearance in the county court the defendant shall be advised in accordance with the provisions set forth in subparagraphs (a)(2)(I) through (VII) and (IX) of this Rule.

(3) ~~Appearance in the County Court Not Issuing the Warrant~~ **Setting of Bail Upon Appearance in Court.** The court shall hold an individualized bail hearing. If the defendant is taken before a county court which did not issue the arrest warrant, the court shall inform the defendant of the matters set out in subsection (a)(2) (I through VII and IX) of this Rule and, allowing time for travel, set bail returnable not less than 14 days thereafter before the court which issued the arrest warrant, and shall transmit forthwith a transcript of the proceedings and all papers in the case to the court which issued the arrest warrant. In the event the defendant does not make bail within forty-eight hours, the sheriff of the county in which the arrest warrant was issued shall return the defendant to the court which issued the warrant.

**Rule 9. Warrant or Summons Upon Indictment or Information**

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**(c) Execution or Service and Return.**

(1) **Execution or Service.** The warrant shall be executed or the summons served as provided in Rule 4(c). The officer executing the warrant shall bring the arrested person before the court ~~without unnecessary delay, or for the purposes of admission to bail, before the clerk of the court, the sheriff of the county where the arrest occurs, or any other officer authorized to admit to bail.~~ or bail hearing officer no later than 48 hours after the arrested person arrives at the jail or holding facility, unless a statutory exception applies.