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March 22, 2019

Bob Choate, Assistant Weld County Attorney  
Weld County Colorado  
915 10<sup>th</sup> Street  
Greely, CO 80631

Via: *Certified Mail*

Email: Bob Choate [bchoate@weldgov.com](mailto:bchoate@weldgov.com), Doug Erler [derler@weldgov.com](mailto:derler@weldgov.com)

**RE: Cease and Desist**

Dear Mr. Choate:

I am writing to demand that the County cease and desist from any further use of the Colorado Pretrial Assessment Tool used to screen those accused of a crime for purposes of recommending risk and conditions of bail and release from jail to judges setting bail in Weld County Colorado. Of course, we have previously established that the county does not maintain any records reflecting the fact that the tool is presently valid or that it has been tested for bias against protected classes, and for that reason alone the county should cease using the tool. To date, we have been ignored.

Nonetheless, we have discovered additional problems with tool, and if the county refuses to immediately cease using the tool, we will be forced to act with the appropriate vigor.

In particular, it is our strong belief that the tool violates the federal Americans With Disabilities Act. As we are sure you aware, the act applies to, "jail and prison intake and classification evaluations."<sup>1</sup> In fact, "Title II of the ADA provides that no qualified individual with a disability shall, because of that disability, be excluded from participation in, denied the benefits of, or subjected to discrimination in the services, programs, and activities of all state or local government entities, including law enforcement, corrections, and justice system entities."

The CPAT's fourth question that is scored is, "Have you ever been treated for mental health problems?"<sup>2</sup> If you have, you get 4 points toward your overall risk score, which will ultimately be what judges will in part base the bail and conditions of release. In fact, the scoring manual creates a presumption of mental illness by requiring the evaluator to score that the person has sought mental health treatment when the answer is unknown: "If answer is unknown, score as 'Yes'." This is direct

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<sup>1</sup> <https://www.ada.gov/cita.html>

<sup>2</sup> <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=47e978bb-3945-9591-7a4f-77755959c5f5>



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discrimination against people with mental illnesses for previously seeking treatment and labeling them as more dangerous for so doing. This is a fatal flaw under the ADA. In addition, prior problems with alcohol for someone who has now recovered will also be impermissibly discriminated against, which also violates the Act.

Second, the use of the risk assessment tool we believe impermissibly treats African-American and Hispanic Defendants differently than white defendants, further entrenching racial disparities within the system and violating the equal protection clause. The CPAT tool in use in Weld County scores defendants who rent their homes as higher risk than those who own their homes. In Denver County, data from 2015 indicated that 63.7% of white persons own their home, 47.4% of Hispanic persons own their home, and 29.1% of African-Americans own their home. Thus, Hispanic defendants will be labeled risky at a rate of 134% of their white counterparts. African-Americans will be labeled as risky at a rate of 218% of their white counterparts. We think this is impermissible discrimination based on race. Not only has the county not bothered to test for such discrimination, county employees have been reckless in failing to make any inquiry into this situation despite requests from us for the information (which they didn't have) and a national movement of 100 national civil rights groups calling for an end to such risk assessments due to concerns of racial basis (which we have previously sent to every Weld County public official).

Next, the use of the CPAT tool without appropriate warnings violates the Due Process Clause. In *State v. Loomis*, the Wisconsin Supreme Court held that such risk assessment tools cannot be used unless a detailed series of due process warnings are given. The CPAT requires no such warning, and we believe the CPAT suffers from the safe defect. We note there is no warning about the CPAT tool being given. Further, we noted that the United States Supreme Court denied *certiorari* in *State v. Loomis*, upholding the reasonableness of the due process warnings.

In addition, we think the CPAT calibration process denies due process and equal protection rights. While builders or users of the tool may select the cut points of risk categories, they cannot predict within a category, and, at the margins, there is little difference for treating people in such categories differently. For example, if 30% risk of a new crime was medium risk and below 30% was low risk, then what difference would there be for a person who was 29.9% risk and someone who is 30% risk. There is no rational basis for these cut points, and thus these legislative acts violate the equal protection clause.

Finally, the process of assigning these the risk tolerances and categories was legislative in nature and did not contain any notice and opportunity by the public to be heard as to the substantive level of tolerance allowed. It is believed the CPAT and several judicial and local officials set the risk tolerances at some unknown point in time, but those are issues of substantive law that effect substantive rights and there is no administrative or other record. To do so violates the due process clause insofar as there was no notice and opportunity to be heard prior to this legislative act or acts having occurred, been adopted, or applied to actual criminal defendants.

In the event the County persists, our first move will be to file a complaint with the United States Department of Justice and the Colorado Civil Rights Division and demand an immediate investigation.



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Of course, we will also begin assisting those who are facing this impermissible discrimination assistance in vindicating their rights.

Sincerely,

DocuSigned by:

A handwritten signature in black ink, appearing to read "Jeff Clayton", enclosed within a blue rounded rectangular border.

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Jeffrey Clayton, M.S., J.D.  
Executive Director  
American Bail Coalition  
[jeff@ambailcoalition.org](mailto:jeff@ambailcoalition.org)

cc: Doug Eler, Director  
Weld County Justice Services Department