

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 19-0946.01 Michael Dohr x4347

SENATE BILL 19-191

SENATE SPONSORSHIP

Bridges and Marble,

HOUSE SPONSORSHIP

(None),

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING DEFENDANTS' RIGHTS RELATED TO PRETRIAL BOND.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill creates rights for defendants related to release on bond as follows:

- ! A court has to hold a bond setting hearing for a defendant within 48 hours after the defendant's arrest;
- ! Unless extraordinary circumstances exist, a defendant must be allowed to post bond within 2 hours after the sheriff receives the bond information from the court;
- ! Unless extraordinary circumstances exist, a defendant

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

cannot be charged more than a \$10 bond processing fee and not charged any additional transaction fees including kiosk fees; except that a standard credit card processing fee may be charged when a credit card is used;

! Unless extraordinary circumstances exist, the custodian of a jail has to release a defendant within 2 hours after the defendant has posted bond; and

! If a defendant has been granted bond and can meet the terms of the bond, the court shall release the defendant even if the defendant is unable to pay a fee or cost.

Under current law, a defendant's bond deposit can be applied to court costs, fees, fines, restitution, or surcharges owed by the defendant. The bill allows application of the bond if the defendant posted the bond and agrees in writing to allow it to be used for such purposes. The bill prohibits that application if the bond was posted by a third party.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 16-4-102 as
3 follows:

4 **16-4-102. Right to bail - before conviction.** (1) Any person who
5 is in custody, and for whom the court has not set bond and conditions of
6 release pursuant to the applicable rule of criminal procedure, and who is
7 not subject to the provisions of section 16-4-101 (5), has the right to a
8 hearing to determine bond and conditions of release. A person in custody
9 may also request a hearing so that bond and conditions of release can be
10 set. Upon receiving the request, the judge shall notify the district attorney
11 immediately of the arrested person's request, and the district attorney ~~shall~~
12 ~~have~~ HAS the right to attend and advise the court of matters pertinent to
13 the type of bond and conditions of release to be set. The judge shall also
14 order the appropriate law enforcement agency having custody of the
15 prisoner to bring him or her before the court forthwith, and the judge shall
16 set bond and conditions of release if the offense for which the person was
17 arrested is bailable. It ~~shall~~ IS not ~~be~~ a prerequisite to bail that a criminal

1 charge of any kind has been filed.

2 (2) (a) THE ARRESTING JURISDICTION SHALL BRING AN ARRESTEE
3 BEFORE A COURT FOR BOND SETTING WITHIN FORTY-EIGHT HOURS AFTER
4 THE DEFENDANT'S ARREST. A COURT SHALL HOLD A BOND SETTING
5 HEARING FOR A DEFENDANT WITHIN FORTY-EIGHT HOURS AFTER THE
6 DEFENDANT'S ARREST. USE OF AUDIOVISUAL CONFERENCING TECHNOLOGY
7 IS PERMISSIBLE TO EXPEDITE BOND SETTING HEARINGS.

8 (b) UNLESS EXTRAORDINARY CIRCUMSTANCES EXIST, A
9 DEFENDANT, A SURETY ON BEHALF OF THE DEFENDANT, OR ANOTHER
10 THIRD PARTY ON BEHALF OF THE DEFENDANT MUST BE ALLOWED TO POST
11 BOND WITHIN TWO HOURS AFTER THE SHERIFF RECEIVES THE BOND
12 INFORMATION FROM THE COURT. THE CUSTODIAN OF A JAIL SHALL ENSURE
13 THE DEFENDANT, A SURETY ON BEHALF OF THE DEFENDANT, OR ANOTHER
14 THIRD PARTY ON BEHALF OF THE DEFENDANT IS NOT CHARGED MORE THAN
15 A TEN DOLLAR BOND PROCESSING FEE. THE CUSTODIAN OF THE JAIL SHALL
16 ALSO ENSURE THE DEFENDANT, A SURETY ON BEHALF OF THE DEFENDANT,
17 OR ANOTHER THIRD PARTY ON BEHALF OF THE DEFENDANT IS NOT
18 CHARGED ANY ADDITIONAL TRANSACTION FEES INCLUDING KIOSK FEES;
19 EXCEPT THAT THE STANDARD CREDIT CARD PROCESSING FEE THAT THE
20 CREDIT CARD COMPANY CHARGES MAY BE CHARGED WHEN A CREDIT CARD
21 IS USED.

22 (c) UNLESS EXTRAORDINARY CIRCUMSTANCES EXIST, THE
23 CUSTODIAN OF A JAIL SHALL RELEASE A DEFENDANT WITHIN TWO HOURS
24 AFTER THE DEFENDANT'S BOND HAS BEEN POSTED. A SUPERVISORY
25 CONDITION OF RELEASE DOES NOT SERVE AS A LEGAL BASIS TO CONTINUE
26 TO DETAIN THE DEFENDANT. IF THE DEFENDANT IS ORDERED TO PRETRIAL
27 SERVICES, INCLUDING BEING FITTED WITH AN ELECTRONIC MONITOR, THAT

1 DOES NOT JUSTIFY DETENTION BEYOND TWO HOURS AFTER BOND HAS BEEN
2 POSTED. IF PRETRIAL SERVICES OR THE ENTITY THAT PROVIDES THE
3 ELECTRONIC MONITORING IS UNAVAILABLE AT THE TIME OF RELEASE, THE
4 DEFENDANT MUST BE RELEASED UPON A PROMISE TO MEET WITH PRETRIAL
5 SERVICES OR THE ENTITY THAT PROVIDES THE ELECTRONIC MONITORING.

6 (d) A DEFENDANT WHO HAS POSTED BOND MUST BE RELEASED
7 REGARDLESS OF WHETHER THE DEFENDANT HAS PAID ANY OUTSTANDING
8 FEE, COST, OR SURCHARGE, INCLUDING BOND PROCESSING FEES, BOOKING
9 FEES, PRETRIAL SUPERVISION FEES, OR ELECTRONIC MONITORING
10 SUPERVISION FEES.

11 (e) FOR PURPOSES OF THIS SECTION, "EXTRAORDINARY
12 CIRCUMSTANCES" INCLUDES AN EMERGENCY THAT RENDERS STAFF
13 UNAVAILABLE TO PROCESS BONDS AND RELEASE DEFENDANTS, BUT IT
14 DOES NOT INCLUDE A LACK OF STAFFING RESOURCES OR ROUTINE
15 ADMINISTRATIVE PRACTICES.

16 **SECTION 2.** In Colorado Revised Statutes, 16-4-111, **amend**
17 (1)(b) as follows:

18 **16-4-111. Disposition of security deposits upon forfeiture or**
19 **termination of bond.** (1) (b) (I) ~~Notwithstanding the provisions of~~
20 ~~paragraph (a) of this subsection (1),~~ If the depositor of the cash bond is
21 the defendant and the defendant owes court costs, fees, fines, restitution,
22 or surcharges at the time the defendant is discharged from all liability
23 under the terms of the bond, the court may apply the deposit toward any
24 amount owed by the defendant in court costs, fees, fines, restitution, or
25 surcharges IF THE DEFENDANT VOLUNTARILY AGREES IN WRITING TO THE
26 USE OF THE DEPOSIT FOR SUCH PURPOSE. A DEFENDANT SHALL NOT BE
27 REQUIRED TO AGREE TO APPLY THE DEPOSIT TOWARD ANY AMOUNT OWED

1 BY THE DEFENDANT AS A CONDITION OF RELEASE. If any amount of the
2 deposit remains after paying the defendant's outstanding court costs, fees,
3 fines, restitution, or surcharges, the court shall return the remainder of the
4 deposit to the defendant.

5 (II) ~~Notwithstanding the provisions of paragraph (a) of this~~
6 ~~subsection (1),~~ If the depositor of the cash bond is not the defendant, but
7 the defendant owes court costs, fees, fines, restitution, or surcharges at the
8 time the defendant is discharged from all liability under the terms of the
9 bond, the court ~~may~~ SHALL NOT apply the deposit toward the amount
10 owed by the defendant in court costs, fees, fines, restitution, or
11 surcharges. ~~if the depositor agrees in writing to the use of the deposit for~~
12 ~~such purpose. If any amount of the deposit remains after paying the~~
13 ~~defendant's outstanding court costs, fees, fines, restitution, or surcharges,~~
14 The court shall return ~~the remainder of~~ the deposit to the depositor.

15 (III) A DEPOSITOR OF A CASH BOND WHO IS NOT THE DEFENDANT
16 MAY DEPOSIT BOND FUNDS DIRECTLY WITH THE JAIL. THE DEPOSITOR
17 SHALL NOT BE REQUIRED TO PAY ANY ADDITIONAL FEES, COSTS, OR
18 SURCHARGES OTHER THAN THE BOND AMOUNT AND BOND PROCESSING
19 FEE. THE DEPOSITOR SHALL NOT BE REQUIRED TO APPLY BOND FUNDS TO
20 THE DEFENDANT'S INMATE ACCOUNT FOR PAYMENT OF THE BOND AND
21 SHALL NOT BE REQUIRED TO DEPOSIT MONEY IN THE DEFENDANT'S NAME.

22 **SECTION 3. Act subject to petition - effective date -**
23 **applicability.** (1) Section 16-4-102 (2)(a) in section 1 of this act takes
24 effect July 1, 2020, and the remainder of this act takes effect at 12:01 a.m.
25 on the day following the expiration of the ninety-day period after final
26 adjournment of the general assembly (August 2, 2019, if adjournment
27 sine die is on May 3, 2019); except that, if a referendum petition is filed

1 pursuant to section 1 (3) of article V of the state constitution against this
2 act or an item, section, or part of this act within such period, then the act,
3 item, section, or part will not take effect unless approved by the people
4 at the general election to be held in November 2020 and, in such case,
5 will take effect on the date of the official declaration of the vote thereon
6 by the governor.

7 (2) Section 16-4-102 (2)(a) in section 1 of this act applies to
8 defendants who are arrested in the county of the outstanding warrant on
9 or after the applicable effective date of section 1 of this act, and section
10 16-4-102 (2)(a) of section 1 of this act applies to defendants who are
11 arrested in a different county than the county of the outstanding warrant
12 on or after July 1, 2021.