

CHAPTER 288

CRIMINAL LAW AND PROCEDURE

SENATE BILL 19-191

BY SENATOR(S) Bridges and Marble, Moreno, Tate;
also REPRESENTATIVE(S) Herod and Gonzales-Gutierrez, Arndt, Bird, Buentello, Caraveo, Cutter, Esgar, Froelich, Galindo,
Hansen, Hooton, Kennedy, Kipp, Lontine, McKean, Melton, Michaelson Jenet, Mullica, Sandridge, Snyder, Soper, Titone,
Weissman, Becker.

AN ACT**CONCERNING DEFENDANTS' RIGHTS RELATED TO PRETRIAL BOND.**

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

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

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

(2) (a) THE CHIEF JUDGE OF EACH JUDICIAL DISTRICT SHALL DEVELOP, IN CONJUNCTION WITH REPRESENTATIVES FROM SHERIFFS' OFFICES, PUBLIC DEFENDERS' OFFICES, DISTRICT ATTORNEYS' OFFICES, COUNTY COMMISSIONERS, AND ANY OTHER AGENCIES DETERMINED NECESSARY BY THE CHIEF JUDGE, A PLAN FOR SETTING BOND FOR ALL IN-CUSTODY DEFENDANTS WITHIN FORTY-EIGHT HOURS OF ARREST. IN DEVELOPING THE PLAN, THE COUNTY COMMISSIONERS, SHERIFFS, AND DISTRICT ATTORNEYS SHALL PROVIDE THE CHIEF JUDGE COST ESTIMATES OF FEASIBILITY AS

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.

WELL AS ANY POTENTIAL SAVINGS FROM THE PROPOSAL, INCLUDING JAIL BED COSTS AND SAVINGS. IN DEVELOPING THE PLAN, THE CHIEF JUDGE SHALL EVALUATE THE POTENTIAL OF UTILIZING NEW OR EXISTING AUDIOVISUAL CONFERENCE TECHNOLOGY. IN AREAS WHERE A LACK OF BROADBAND COVERAGE MAKES AUDIOVISUAL CONFERENCING IMPOSSIBLE OR UNRELIABLE, THE CHIEF JUDGE MAY EVALUATE THE POTENTIAL OF UTILIZING TELEPHONIC HEARINGS. NO LATER THAN NOVEMBER 1, 2019, THE STATE COURT ADMINISTRATOR'S OFFICE SHALL REPORT TO THE JUDICIARY COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR ANY SUCCESSOR COMMITTEES, THE PLANS FOR ALL TWENTY-TWO JUDICIAL DISTRICTS, NOT INCLUDING THE DENVER COUNTY COURT. THE REPORT MUST INCLUDE AN ESTIMATE OF RESOURCES NECESSARY TO IMPLEMENT THIS SUBSECTION (2)(a).

(b) UNLESS EXTRAORDINARY CIRCUMSTANCES EXIST, A DEFENDANT, A SURETY ON BEHALF OF THE DEFENDANT, OR ANOTHER THIRD PARTY ON BEHALF OF THE DEFENDANT MUST BE ALLOWED TO POST BOND WITHIN TWO HOURS AFTER THE SHERIFF RECEIVES THE BOND INFORMATION FROM THE COURT. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, A SHERIFF MAY ALLOW AN INDIVIDUAL TO CHOOSE TO STAY IN JAIL OVERNIGHT AFTER RELEASE WHEN EXTENUATING CIRCUMSTANCES EXIST, INCLUDING INCLEMENT WEATHER, LACK OF TRANSPORTATION, OR LACK OF SHELTER.

(c) THE CUSTODIAN OF A JAIL SHALL ENSURE THE DEFENDANT, A SURETY ON BEHALF OF THE DEFENDANT, OR ANOTHER THIRD PARTY ON BEHALF OF THE DEFENDANT IS NOT CHARGED MORE THAN A TEN-DOLLAR BOND PROCESSING FEE.

(d) THE CUSTODIAN OF A JAIL SHALL ALSO ENSURE THE DEFENDANT, A SURETY ON BEHALF OF THE DEFENDANT, OR ANOTHER THIRD PARTY ON BEHALF OF THE DEFENDANT IS NOT CHARGED ANY ADDITIONAL TRANSACTION FEES INCLUDING KIOSK FEES; EXCEPT THAT THE STANDARD CREDIT CARD PROCESSING FEE THAT THE CREDIT CARD COMPANY CHARGES MAY BE CHARGED WHEN A CREDIT CARD IS USED, OR, WHEN A THIRD-PARTY VENDOR PROVIDES DEFENDANTS THE OPTION TO PAY MONETARY BOND WITH A CREDIT CARD, THE DEFENDANT CAN BE REQUIRED TO PAY UP TO A THREE-AND-ONE-HALF PERCENT CREDIT CARD PAYMENT PROCESSING FEE.

(e) UNLESS EXTRAORDINARY CIRCUMSTANCES EXIST, THE CUSTODIAN OF A JAIL SHALL RELEASE A DEFENDANT AS SOON AS PRACTICABLE BUT NO LATER THAN FOUR HOURS AFTER THE DEFENDANT IS PHYSICALLY PRESENT IN THE JAIL AND THE DEFENDANT'S BOND HAS BEEN POSTED. A SUPERVISORY CONDITION OF RELEASE DOES NOT SERVE AS A LEGAL BASIS TO CONTINUE TO DETAIN THE DEFENDANT; EXCEPT THAT, IF THE DEFENDANT IS ORDERED RELEASED UPON CONDITION OF BEING SUBJECT TO ELECTRONIC MONITORING, THE DEFENDANT MAY BE HELD UP TO AS LONG AS PRACTICABLE BUT NO LONGER THAN TWENTY-FOUR HOURS AFTER THE DEFENDANT IS PHYSICALLY PRESENT IN THE JAIL AND THE DEFENDANT'S BOND HAS BEEN POSTED, IF SUCH DELAY IS NECESSARY TO ENSURE THE DEFENDANT IS FITTED WITH ELECTRONIC MONITORING AND THE COURT HAS AUTHORIZED THE DEFENDANT TO BE HELD UNTIL THE ELECTRONIC MONITOR IS FITTED. IF THE COURT ORDERS ELECTRONIC MONITORING FOR THE PROTECTION OF A SPECIFIC INDIVIDUAL, AND THE DEFENDANT IS ORDERED TO HAVE NO CONTACT WITH THAT SPECIFIC INDIVIDUAL, AND THE JUDGE ORDERS THAT THE DEFENDANT NOT BE RELEASED WITHOUT ELECTRONIC MONITORING BASED ON FINDING THAT THE ELECTRONIC MONITORING

IS NECESSARY FOR PUBLIC SAFETY, THEN THE TIME LIMITS REGARDING RELEASE OF THE DEFENDANT IN THIS SUBSECTION DO NOT APPLY. HOWEVER, IF A DEFENDANT IS HELD MORE THAN TWENTY-FOUR HOURS AFTER POSTING BOND AWAITING ELECTRONIC MONITORING FITTING, THE SHERIFF SHALL BRING THE DEFENDANT TO THE COURT THE NEXT DAY THE COURT IS IN SESSION AND EXPLAIN THE REASON FOR THE DELAY.

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

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

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

16-4-111. Disposition of security deposits upon forfeiture or termination of bond. (1) (b) (I) ~~Notwithstanding the provisions of paragraph (a) of this subsection (1);~~ If the depositor of the cash bond is the defendant and the defendant owes court costs, fees, fines, restitution, or surcharges at the time the defendant is discharged from all liability under the terms of the bond, the court may apply the deposit toward any amount owed by the defendant in court costs, fees, fines, restitution, or surcharges if the defendant voluntarily agrees in writing to the use of the deposit for such purpose. A defendant shall not be required to agree to apply the deposit toward any amount owed by the defendant as a condition of release. If any amount of the deposit remains after paying the defendant's outstanding court costs, fees, fines, restitution, or surcharges, the court shall return the remainder of the deposit to the defendant.

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

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

SECTION 3. Act subject to petition - effective date. Section 16-4-102 (2)(b), (2)(c), (2)(d), (2)(e), (2)(f), and (2)(g), Colorado Revised Statutes, in section 1 of

this act takes effect January 1, 2020; and the remainder of this act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 28, 2019