

# ACLU Colorado

## SUPPORT HB 18-1089

**What does HB 18-1089 do?** The bill significantly limits the use of money bond for individuals accused of non-violent misdemeanor, petty offenses, and municipal code violations in an effort to ensure these individuals are not held in jail awaiting trial solely because they are unable to afford a monetary bond.

### **FACT: Pretrial defendants, still innocent in the eyes of the law, are a significant driver of jail overcrowding in Colorado**

- Across the state, Sheriffs report dangerously overcrowded jails. For example, Pueblo County Jail is operating at **151%** capacity and Alamosa County Jail is at **147%** capacity.
- In Colorado, an average **67%** of the county jail population is made up of pretrial defendants who are still innocent in the eyes of the law.<sup>i</sup>
  - On average, **32%** of pretrial detainees are in custody for a misdemeanor charge, rather than a felony.<sup>ii</sup>
  - Pretrial inmates often occupy jail beds for weeks. For example, the average length of stay for pretrial misdemeanor defendants is **39 days** in Adams, **30 days** in Archuleta, and **18 days** in Chaffee.
- For incarcerated pretrial misdemeanants, **money bond is set in 73% of cases** (an average of about **55,000** cases per year throughout Colorado); non-money bonds are given in only 27% of misdemeanor cases.<sup>iii</sup>
- Once a money bond is set, **defendants in about 10,000 misdemeanor cases per year are unable to post the required amount** (about 17% of misdemeanor cases)—meaning they remain in custody simply because they are unable to buy their release.<sup>iv</sup>

### **FACT: Money bonds are less effective than non-money bonds at ensuring a defendant's appearance in court**

- Nationwide studies, including a landmark Colorado study from 2013, have debunked the myth that requiring a defendant to post money bond means that they are more likely to appear in court.<sup>v</sup>
- Recent data from Colorado further supports non-money bonds as the most effective pretrial release option.<sup>vi</sup> In 2016—misdemeanor defendants released on money bond were more likely to fail to appear than those released on non-monetary conditions. For instance:
  - In the 1<sup>st</sup> (Gilpin and Jefferson)—defendants required to post a **money bond** failed to appear in **19%** of cases, while defendants released on a **non-money bond** failed to appear in only **11%** of cases.
  - In the 20<sup>th</sup> (Boulder)—defendants required to post a **money bond** failed to appear in **14%** of cases, while defendants released on a **non-money bond** failed to appear in only **7%** of cases.

### **FACT: Money bonds are less effective than non-money bonds at ensuring public safety**

- Nationwide studies, including recent data from Colorado, also debunk the myth that requiring a defendant to post money bond means that they are less likely to pick up a new criminal charge.<sup>vii</sup>
- **During the 3-year period covering 2014-16**—misdemeanor defendants released after posting **money bond** were more likely to pick up a new criminal charge (**14%** of cases resulted in a new charge) than defendants released on a **non-money bond** (**13%** of cases resulted in a new charge).
- For misdemeanor offenders out on bond, **the most common new charge is traffic misdemeanors (33%)**.

**Since money bonds are not effective—what works?** Failures to appear in court are rarely intentional. Policy-makers can avoid costly pretrial detention and improve appearance rates of pretrial defendants out on bond by providing services that address barriers, such as: simple court-date reminders; assistance with transportation and childcare; and imposition of the least-restrictive conditions for supervised pretrial defendants (such as avoiding onerous “check-in” requirements or no-use orders for those struggling with addiction).

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<sup>i</sup> This figure is extrapolated from data obtained by the ACLU from counties throughout Colorado. The ACLU is currently engaged in research to create a recent “snapshot” of the jail population. At this time we have received data from counties making up nearly 50% of Colorado’s population. The “snapshot” data is from November 27, 2017 at 3 am.

<sup>ii</sup> This figure is an average of data obtained by the ACLU from 8 counties thus far that were able to provide a breakdown of their pretrial population by misdemeanor and felony (not all counties maintain such a breakdown).

<sup>iii</sup> See Division of Criminal Justice, *HB 13-1236 Bond Analysis* (prepared on 8/25/2017). *Note:* this dataset excludes data from the Denver County Court.

<sup>iv</sup> See Division of Criminal Justice, *Bond Analysis – Cases that do not post bond* (prepared on 10/10/2017). *Note:* this dataset excludes data from the Denver County Court.

<sup>v</sup> Jones, Pretrial Justice Institute, *Unsecured Bonds: The as effective and most efficient pretrial release option* (October 2013)

<sup>vi</sup> *Supra*, note iii.

<sup>vii</sup> See Division of Criminal Justice, *Bond Analysis – Public Safety* (prepared on 9/7/2018). *Note:* this dataset excludes data from the Denver County Court.