

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 19-0946.01 Michael Dohr x4347

SENATE BILL 19-191

SENATE SPONSORSHIP

Bridges and Marble, Tate

HOUSE SPONSORSHIP

Herod and Gonzales-Gutierrez,

Senate Committees

Judiciary
Finance
Appropriations

House Committees

Judiciary
Appropriations

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.*

SENATE
3rd Reading Unamended
April 22, 2019

SENATE
Amended 2nd Reading
April 19, 2019

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

3 (2) (a) THE CHIEF JUDGE OF EACH JUDICIAL DISTRICT SHALL
4 DEVELOP, IN CONJUNCTION WITH REPRESENTATIVES FROM SHERIFFS'
5 OFFICES, PUBLIC DEFENDERS' OFFICES, DISTRICT ATTORNEYS' OFFICES,
6 COUNTY COMMISSIONERS, AND ANY OTHER AGENCIES DETERMINED
7 NECESSARY BY THE CHIEF JUDGE, A PLAN FOR SETTING BOND FOR ALL
8 IN-CUSTODY DEFENDANTS WITHIN FORTY-EIGHT HOURS OF ARREST. IN
9 DEVELOPING THE PLAN, THE COUNTY COMMISSIONERS, SHERIFFS, AND
10 DISTRICT ATTORNEYS SHALL PROVIDE THE CHIEF JUDGE COST ESTIMATES
11 OF MEETING THE REQUIREMENT AS WELL AS ANY POTENTIAL SAVINGS
12 FROM THE REQUIREMENT, INCLUDING JAIL BED COSTS AND SAVINGS. IN
13 DEVELOPING THE PLAN, THE CHIEF JUDGE SHALL EVALUATE THE
14 POTENTIAL OF UTILIZING NEW OR EXISTING AUDIOVISUAL CONFERENCE
15 TECHNOLOGY. IN AREAS WHERE A LACK OF BROADBAND COVERAGE
16 MAKES AUDIOVISUAL CONFERENCING IMPOSSIBLE OR UNRELIABLE, THE
17 CHIEF JUDGE MAY EVALUATE THE POTENTIAL OF UTILIZING TELEPHONIC
18 HEARINGS. NO LATER THAN NOVEMBER 1, 2019, THE STATE COURT
19 ADMINISTRATOR'S OFFICE SHALL REPORT TO THE JUDICIARY COMMITTEES
20 OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR ANY SUCCESSOR
21 COMMITTEES, THE PLANS FOR ALL TWENTY-TWO JUDICIAL DISTRICTS, NOT
22 INCLUDING THE DENVER COUNTY COURT. THE REPORT MUST INCLUDE AN
23 ESTIMATE OF RESOURCES NECESSARY TO IMPLEMENT THIS SUBSECTION
24 (2)(a).

25 (b) UNLESS EXTRAORDINARY CIRCUMSTANCES EXIST, A
26 DEFENDANT, A SURETY ON BEHALF OF THE DEFENDANT, OR ANOTHER
27 THIRD PARTY ON BEHALF OF THE DEFENDANT MUST BE ALLOWED TO POST

1 BOND WITHIN TWO HOURS AFTER THE SHERIFF RECEIVES THE BOND
2 INFORMATION FROM THE COURT. NOTWITHSTANDING THE PROVISIONS OF
3 THIS SECTION, A SHERIFF MAY ALLOW AN INDIVIDUAL TO CHOOSE TO STAY
4 IN JAIL OVERNIGHT AFTER RELEASE WHEN EXTENUATING CIRCUMSTANCES
5 EXIST, INCLUDING INCLEMENT WEATHER, LACK OF TRANSPORTATION, OR
6 LACK OF SHELTER. ___

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

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

21 (e) UNLESS EXTRAORDINARY CIRCUMSTANCES EXIST, THE
22 CUSTODIAN OF A JAIL SHALL RELEASE A DEFENDANT AS SOON AS
23 PRACTICABLE BUT NO LATER THAN FOUR HOURS AFTER THE DEFENDANT
24 IS PHYSICALLY PRESENT IN THE JAIL AND THE DEFENDANT'S BOND HAS
25 BEEN POSTED. A SUPERVISORY CONDITION OF RELEASE DOES NOT SERVE
26 AS A LEGAL BASIS TO CONTINUE TO DETAIN THE DEFENDANT; EXCEPT
27 THAT, IF THE DEFENDANT IS ORDERED RELEASED UPON CONDITION OF

1 BEING SUBJECT TO ELECTRONIC MONITORING, THE DEFENDANT MAY BE
2 HELD UP TO AS LONG AS PRACTICABLE BUT NO LONGER THAN
3 TWENTY-FOUR HOURS AFTER THE DEFENDANT IS PHYSICALLY PRESENT IN
4 THE JAIL AND THE DEFENDANT'S BOND HAS BEEN POSTED, IF SUCH DELAY
5 IS NECESSARY TO ENSURE THE DEFENDANT IS FITTED WITH ELECTRONIC
6 MONITORING AND THE COURT HAS AUTHORIZED THE DEFENDANT TO BE
7 HELD UNTIL THE ELECTRONIC MONITOR IS FITTED. IF THE COURT ORDERS
8 ELECTRONIC MONITORING FOR THE PROTECTION OF A SPECIFIC INDIVIDUAL,
9 AND THE DEFENDANT IS ORDERED TO HAVE NO CONTACT WITH THAT
10 SPECIFIC INDIVIDUAL, AND THE JUDGE ORDERS THAT THE DEFENDANT NOT
11 BE RELEASED WITHOUT ELECTRONIC MONITORING BASED ON FINDING THAT
12 THE ELECTRONIC MONITORING IS NECESSARY FOR PUBLIC SAFETY, THEN
13 THE TIME LIMITS REGARDING RELEASE OF THE DEFENDANT IN THIS
14 SUBSECTION DO NOT APPLY. HOWEVER, IF A DEFENDANT IS HELD MORE
15 THAN TWENTY-FOUR HOURS AFTER POSTING BOND AWAITING ELECTRONIC
16 MONITORING FITTING, THE SHERIFF SHALL BRING THE DEFENDANT TO THE
17 COURT THE NEXT DAY THE COURT IS IN SESSION AND EXPLAIN THE REASON
18 FOR THE DELAY. == ==

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

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

1 PRACTICES.

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

4 **16-4-111. Disposition of security deposits upon forfeiture or**
5 **termination of bond.** (1) (b) (I) ~~Notwithstanding the provisions of~~
6 ~~paragraph (a) of this subsection (1),~~ If the depositor of the cash bond is
7 the defendant and the defendant owes court costs, fees, fines, restitution,
8 or surcharges at the time the defendant is discharged from all liability
9 under the terms of the bond, the court may apply the deposit toward any
10 amount owed by the defendant in court costs, fees, fines, restitution, or
11 surcharges IF THE DEFENDANT VOLUNTARILY AGREES IN WRITING TO THE
12 USE OF THE DEPOSIT FOR SUCH PURPOSE. A DEFENDANT SHALL NOT BE
13 REQUIRED TO AGREE TO APPLY THE DEPOSIT TOWARD ANY AMOUNT OWED
14 BY THE DEFENDANT AS A CONDITION OF RELEASE. If any amount of the
15 deposit remains after paying the defendant's outstanding court costs, fees,
16 fines, restitution, or surcharges, the court shall return the remainder of the
17 deposit to the defendant.

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

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

8 **SECTION 3. Act subject to petition - effective date -**
9 **applicability.** Section 16-4-102 (2)(b), (2)(c) (2)(d), (2)(e), (2)(f), and
10 (2)(g), Colorado Revised Statutes, in section 1 of this act takes effect
11 January 1, 2020; and the remainder of this act takes effect at 12:01 a.m.
12 on the day following the expiration of the ninety-day period after final
13 adjournment of the general assembly (August 2, 2019, if adjournment
14 sine die is on May 3, 2019); except that, if a referendum petition is filed
15 pursuant to section 1 (3) of article V of the state constitution against this
16 act or an item, section, or part of this act within such period, then the act,
17 item, section, or part will not take effect unless approved by the people
18 at the general election to be held in November 2020 and, in such case,
19 will take effect on the date of the official declaration of the vote thereon
20 by the governor.

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