

**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,

HOUSE SPONSORSHIP

(None),

Senate Committees

Judiciary
Finance

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 IN-CUSTODY
3 ARRESTEE BEFORE A COURT FOR BOND SETTING WITHIN FORTY-EIGHT
4 HOURS AFTER AN ARRESTED DEFENDANT ARRIVES AT A JAIL OR HOLDING
5 FACILITY. A COURT SHALL HOLD A BOND SETTING HEARING FOR AN
6 IN-CUSTODY DEFENDANT WITHIN FORTY-EIGHT HOURS AFTER AN
7 ARRESTED DEFENDANT ARRIVES AT A JAIL OR HOLDING FACILITY. AFTER
8 SETTING BOND FOR A DEFENDANT WHO IS IN JAIL CUSTODY, THE COURT
9 SHALL PROMPTLY PROVIDE THE JAIL WITH THE DEFENDANT'S BOND
10 INFORMATION. USE OF AUDIOVISUAL CONFERENCING TECHNOLOGY IS
11 PERMISSIBLE TO EXPEDITE BOND SETTING HEARINGS. WHEN HIGH-SPEED
12 INTERNET ACCESS IS UNAVAILABLE IN A RURAL JURISDICTION MAKING
13 AUDIOVISUAL CONFERENCING IMPOSSIBLE, THE COURT MAY CONDUCT THE
14 HEARING TELEPHONICALLY. THE CHIEF JUDGE OF EACH JUDICIAL DISTRICT
15 SHALL DEVELOP, IN CONJUNCTION WITH REPRESENTATIVES FROM SHERIFFS'
16 OFFICES, PUBLIC DEFENDERS' OFFICES, DISTRICT ATTORNEYS' OFFICES, AND
17 ANY OTHER AGENCIES DETERMINED NECESSARY BY THE CHIEF JUDGE,
18 PLANS FOR COMPLYING WITH THIS SUBSECTION (2)(a). IN DEVELOPING THE
19 PLAN, THE CHIEF JUDGE SHALL EVALUATE THE POTENTIAL OF UTILIZING
20 NEW OR EXISTING AUDIOVISUAL CONFERENCE TECHNOLOGY. IN AREAS
21 WHERE A LACK OF BROADBAND COVERAGE MAKES AUDIOVISUAL
22 CONFERENCING IMPOSSIBLE OR UNRELIABLE, THE CHIEF JUDGE MAY
23 EVALUATE THE POTENTIAL OF UTILIZING TELEPHONIC HEARINGS. NO
24 LATER THAN NOVEMBER 1, 2019, THE STATE COURT ADMINISTRATOR'S
25 OFFICE SHALL REPORT TO THE JUDICIARY COMMITTEES OF THE HOUSE OF
26 REPRESENTATIVES AND THE SENATE, OR ANY SUCCESSOR COMMITTEES,
27 THE PLANS FOR ALL TWENTY-TWO JUDICIAL DISTRICTS, NOT INCLUDING

1 THE DENVER COUNTY COURT. THE REPORT MUST INCLUDE AN ESTIMATE
2 OF RESOURCES NECESSARY TO IMPLEMENT THIS SUBSECTION (2)(a).

3 (b) UNLESS EXTRAORDINARY CIRCUMSTANCES EXIST, A
4 DEFENDANT, A SURETY ON BEHALF OF THE DEFENDANT, OR ANOTHER
5 THIRD PARTY ON BEHALF OF THE DEFENDANT MUST BE ALLOWED TO POST
6 BOND WITHIN TWO HOURS AFTER THE SHERIFF RECEIVES THE BOND
7 INFORMATION FROM THE COURT. NOTWITHSTANDING THE PROVISIONS OF
8 THIS SECTION, A SHERIFF MAY ALLOW AN INDIVIDUAL TO CHOOSE TO STAY
9 IN JAIL OVERNIGHT AFTER RELEASE WHEN EXTENUATING CIRCUMSTANCES
10 EXIST, INCLUDING INCLEMENT WEATHER, LACK OF TRANSPORTATION, OR
11 LACK OF SHELTER. THE CUSTODIAN OF A JAIL SHALL ENSURE THE
12 DEFENDANT, A SURETY ON BEHALF OF THE DEFENDANT, OR ANOTHER
13 THIRD PARTY ON BEHALF OF THE DEFENDANT IS NOT CHARGED MORE THAN
14 A TEN DOLLAR BOND PROCESSING FEE. THE CUSTODIAN OF THE JAIL SHALL
15 ALSO ENSURE THE DEFENDANT, A SURETY ON BEHALF OF THE DEFENDANT,
16 OR ANOTHER THIRD PARTY ON BEHALF OF THE DEFENDANT IS NOT
17 CHARGED ANY ADDITIONAL TRANSACTION FEES INCLUDING KIOSK FEES;
18 EXCEPT THAT THE STANDARD CREDIT CARD PROCESSING FEE THAT THE
19 CREDIT CARD COMPANY CHARGES MAY BE CHARGED WHEN A CREDIT CARD
20 IS USED.

21 (c) 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 PRACTICABLE BUT NO LATER THAN TWENTY-FOUR
3 HOURS AFTER THE DEFENDANT IS PHYSICALLY PRESENT IN THE JAIL AND
4 THE DEFENDANT'S BOND HAS BEEN POSTED, IF SUCH DELAY IS NECESSARY
5 TO ENSURE THE DEFENDANT IS FITTED WITH ELECTRONIC MONITORING AND
6 THAT THE COURT HAS AUTHORIZED THE DEFENDANT TO BE HELD UNTIL
7 THE ELECTRONIC MONITOR IS FITTED ___ WITH AN ELECTRONIC MONITOR,
8 THAT DOES NOT JUSTIFY DETENTION BEYOND FOUR HOURS AFTER BOND
9 HAS BEEN POSTED. IF PRETRIAL SERVICES OR THE ENTITY THAT PROVIDES
10 THE ELECTRONIC MONITORING IS UNAVAILABLE AT THE TIME OF RELEASE,
11 THE DEFENDANT MUST BE RELEASED UPON A PROMISE TO MEET WITH
12 PRETRIAL SERVICES OR THE ENTITY THAT PROVIDES THE ELECTRONIC
13 MONITORING.

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

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

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

26 **16-4-111. Disposition of security deposits upon forfeiture or**
27 **termination of bond.** (1) (b) (I) ~~Notwithstanding the provisions of~~

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

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

23 (III) A DEPOSITOR OF A CASH BOND WHO IS NOT THE DEFENDANT
24 MAY DEPOSIT BOND FUNDS DIRECTLY WITH THE JAIL. THE DEPOSITOR
25 SHALL NOT BE REQUIRED TO PAY ANY ADDITIONAL FEES, COSTS, OR
26 SURCHARGES OTHER THAN THE BOND AMOUNT AND BOND PROCESSING
27 FEE. THE DEPOSITOR SHALL NOT BE REQUIRED TO APPLY BOND FUNDS TO

1 THE DEFENDANT'S INMATE ACCOUNT FOR PAYMENT OF THE BOND AND
2 SHALL NOT BE REQUIRED TO DEPOSIT MONEY IN THE DEFENDANT'S NAME.

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

15 (2) Section 16-4-102 (2)(a) in section 1 of this act applies to
16 defendants who are arrested in the county of the outstanding warrant on
17 or after the applicable effective date of section 1 of this act, and section
18 16-4-102 (2)(a) of section 1 of this act applies to defendants who are
19 arrested in a different county than the county of the outstanding warrant
20 on or after July 1, 2021.