

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

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 19-0946.01 Michael Dohr x4347

SENATE BILL 19-191

SENATE SPONSORSHIP

Bridges and Marble,

HOUSE SPONSORSHIP

(None),

Senate Committees

Judiciary
Finance
Appropriations

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.

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 (2) (a) (I) THE ARRESTING JURISDICTION SHALL BRING AN
3 IN-CUSTODY ARRESTEE BEFORE A COURT FOR BOND SETTING WITHIN
4 FORTY-EIGHT HOURS AFTER AN ARRESTED DEFENDANT ARRIVES AT A JAIL
5 OR HOLDING FACILITY. A COURT SHALL HOLD A BOND SETTING HEARING
6 FOR AN 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.

15 (II) THE CHIEF JUDGE OF EACH JUDICIAL DISTRICT SHALL DEVELOP,
16 IN CONJUNCTION WITH REPRESENTATIVES FROM SHERIFFS' OFFICES, PUBLIC
17 DEFENDERS' OFFICES, DISTRICT ATTORNEYS' OFFICES, AND ANY OTHER
18 AGENCIES DETERMINED NECESSARY BY THE CHIEF JUDGE, PLANS FOR
19 COMPLYING WITH THIS SUBSECTION (2)(a). IN DEVELOPING THE PLAN, THE
20 CHIEF JUDGE SHALL CONSIDER THE ASSOCIATED COSTS FOR RURAL
21 COUNTIES AND DISTRICT ATTORNEYS' OFFICES AND CONSIDER THE COSTS
22 AND SAVINGS FOR INDIVIDUAL COUNTIES, INCLUDING JAIL BED COSTS. IN
23 DEVELOPING THE PLAN, THE CHIEF JUDGE SHALL EVALUATE THE
24 POTENTIAL OF UTILIZING NEW OR EXISTING AUDIOVISUAL CONFERENCE
25 TECHNOLOGY. IN AREAS WHERE A LACK OF BROADBAND COVERAGE
26 MAKES AUDIOVISUAL CONFERENCING IMPOSSIBLE OR UNRELIABLE, THE
27 CHIEF JUDGE MAY EVALUATE THE POTENTIAL OF UTILIZING TELEPHONIC

1 HEARINGS. NO LATER THAN NOVEMBER 1, 2019, THE STATE COURT
2 ADMINISTRATOR'S OFFICE SHALL REPORT TO THE JUDICIARY COMMITTEES
3 OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR ANY SUCCESSOR
4 COMMITTEES, THE PLANS FOR ALL TWENTY-TWO JUDICIAL DISTRICTS, NOT
5 INCLUDING THE DENVER COUNTY COURT. THE REPORT MUST INCLUDE AN
6 ESTIMATE OF RESOURCES NECESSARY TO IMPLEMENT THIS SUBSECTION
7 (2)(a).

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. NOTWITHSTANDING THE PROVISIONS OF
13 THIS SECTION, A SHERIFF MAY ALLOW AN INDIVIDUAL TO CHOOSE TO STAY
14 IN JAIL OVERNIGHT AFTER RELEASE WHEN EXTENUATING CIRCUMSTANCES
15 EXIST, INCLUDING INCLEMENT WEATHER, LACK OF TRANSPORTATION, OR
16 LACK OF SHELTER.

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

21 (d) THE CUSTODIAN OF A JAIL SHALL ALSO ENSURE THE
22 DEFENDANT, A SURETY ON BEHALF OF THE DEFENDANT, OR ANOTHER
23 THIRD PARTY ON BEHALF OF THE DEFENDANT IS NOT CHARGED ANY
24 ADDITIONAL TRANSACTION FEES INCLUDING KIOSK FEES; EXCEPT THAT THE
25 STANDARD CREDIT CARD PROCESSING FEE THAT THE CREDIT CARD
26 COMPANY CHARGES MAY BE CHARGED WHEN A CREDIT CARD IS USED, OR,
27 WHEN A THIRD-PARTY VENDOR PROVIDES DEFENDANTS THE OPTION TO PAY

1 MONETARY BOND WITH A CREDIT CARD, THE DEFENDANT CAN BE
2 REQUIRED TO PAY UP TO A THREE-AND-ONE-HALF PERCENT CREDIT CARD
3 PAYMENT PROCESSING FEE.

4 (e) UNLESS EXTRAORDINARY CIRCUMSTANCES EXIST, THE
5 CUSTODIAN OF A JAIL SHALL RELEASE A DEFENDANT AS SOON AS
6 PRACTICABLE BUT NO LATER THAN FOUR HOURS AFTER THE DEFENDANT
7 IS PHYSICALLY PRESENT IN THE JAIL AND THE DEFENDANT'S BOND HAS
8 BEEN POSTED. A SUPERVISORY CONDITION OF RELEASE DOES NOT SERVE
9 AS A LEGAL BASIS TO CONTINUE TO DETAIN THE DEFENDANT; EXCEPT
10 THAT, IF THE DEFENDANT IS ORDERED RELEASED UPON CONDITION OF
11 BEING SUBJECT TO ELECTRONIC MONITORING, THE DEFENDANT MAY BE
12 HELD UP TO AS LONG AS PRACTICABLE BUT NO LONGER THAN
13 TWENTY-FOUR HOURS AFTER THE DEFENDANT IS PHYSICALLY PRESENT IN
14 THE JAIL AND THE DEFENDANT'S BOND HAS BEEN POSTED, IF SUCH DELAY
15 IS NECESSARY TO ENSURE THE DEFENDANT IS FITTED WITH ELECTRONIC
16 MONITORING AND THE COURT HAS AUTHORIZED THE DEFENDANT TO BE
17 HELD UNTIL THE ELECTRONIC MONITOR IS FITTED. IF THE COURT ORDERS
18 ELECTRONIC MONITORING FOR THE PROTECTION OF A SPECIFIC INDIVIDUAL,
19 AND THE DEFENDANT IS ORDERED TO HAVE NO CONTACT WITH THAT
20 SPECIFIC INDIVIDUAL, AND THE JUDGE ORDERS THAT THE DEFENDANT NOT
21 BE RELEASED WITHOUT ELECTRONIC MONITORING BASED ON FINDING THAT
22 THE ELECTRONIC MONITORING IS NECESSARY FOR PUBLIC SAFETY, THEN
23 THE TIME LIMITS REGARDING RELEASE OF THE DEFENDANT IN THIS
24 SUBSECTION DO NOT APPLY. HOWEVER, IF A DEFENDANT IS HELD MORE
25 THAN TWENTY-FOUR HOURS AFTER POSTING BOND AWAITING ELECTRONIC
26 MONITORING FITTING, THE SHERIFF SHALL BRING THE DEFENDANT TO THE
27 COURT THE NEXT DAY THE COURT IS IN SESSION AND EXPLAIN THE REASON

1 FOR THE DELAY.

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

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

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

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

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

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

18 **SECTION 3. Act subject to petition - effective date -**
19 **applicability.** (1) Section 16-4-102 (2)(a) in section 1 of this act takes
20 effect July 1, 2020; section 16-4-102 (2)(b), (2)(c), (2)(d), (2)(e), (2)(f),
21 and (2)(g), Colorado Revised Statutes, in section 1 of this act takes effect
22 January 1, 2020; and the remainder of this act takes effect at 12:01 a.m.
23 on the day following the expiration of the ninety-day period after final
24 adjournment of the general assembly (August 2, 2019, if adjournment
25 sine die is on May 3, 2019); except that, if a referendum petition is filed
26 pursuant to section 1 (3) of article V of the state constitution against this
27 act or an item, section, or part of this act within such period, then the act,

1 item, section, or part will not take effect unless approved by the people
2 at the general election to be held in November 2020 and, in such case,
3 will take effect on the date of the official declaration of the vote thereon
4 by the governor.

5 (2) Section 16-4-102 (2)(a) in section 1 of this act applies to
6 defendants who are arrested in the county of the outstanding warrant, and
7 the county is a class A or class B county as described in section 13-6-201
8 (2), on or after the applicable effective date of section 1 of this act, and
9 section 16-4-102 (2)(a) of section 1 of this act applies to defendants who
10 are arrested in a class C or class D county, as described in section
11 13-6-201 (2), or are arrested in a different county than the county of the
12 outstanding warrant on or after July 1, 2021.