

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0687.01 Richard Sweetman x4333

HOUSE BILL 18-1089

HOUSE SPONSORSHIP

Benavidez,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING REFORM OF PRETRIAL CRIMINAL PROCEDURES, AND, IN
102 CONNECTION THEREWITH, PROHIBITING THE USE OF MONETARY
103 BONDING EXCEPT FOR CERTAIN DEFENDANTS AND REQUIRING
104 COURTS TO CONDUCT TIMELY HEARINGS TO RECONSIDER
105 MONETARY CONDITIONS OF BOND UNDER CERTAIN
106 CIRCUMSTANCES.

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 states that, except in certain cases, a court shall not require

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.

a defendant arrested and charged for any misdemeanor, petty offense, or municipal code violation to post monetary bail as a condition of being discharged from custody. A defendant who is charged with an offense other than a felony may not be released from custody under his or her own recognizance until he or she signs and files with the clerk of the court or other designated person a written release agreement that includes certain promises.

Current law requires any pretrial services program to be established pursuant to a plan formulated by a community advisory board created for such purpose and appointed by the chief judge of the judicial district. The bill makes this requirement merely permissible.

The bill states that if a person is in custody and the court imposed a monetary condition of bond for release, and the person, after 5 days from the setting of the monetary condition of bond, remains in custody because he or she is unable to meet the monetary obligations of the bond, upon motion of the person, the court shall forthwith conduct a hearing to reconsider the monetary condition of the bond.

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 hearing within forty-eight hours - bail**
5 **before conviction.** Any person who is in custody, and for whom the court
6 has not set bond and conditions of release pursuant to the applicable rule
7 of criminal procedure, and who is not subject to the provisions of section
8 16-4-101 (5), has the right to a hearing NOT LATER THAN FORTY-EIGHT
9 HOURS AFTER HIS OR HER ARREST to determine bond and conditions of
10 release. A person in custody may also request a hearing so that bond and
11 conditions of release can be set. Upon receiving the request, the judge
12 shall notify the district attorney immediately of the arrested person's
13 request, and the district attorney ~~shall have~~ HAS the right to attend and
14 advise the court of matters pertinent to the type of bond and conditions of
15 release to be set. The judge shall also order the appropriate law
16 enforcement agency having custody of the prisoner to bring him or her

1 before the court forthwith, and the judge shall set bond and conditions of
2 release if the offense for which the person was arrested is bailable. It ~~shall~~
3 ~~IS not be~~ a prerequisite to bail that a criminal charge of any kind has been
4 filed.

5 **SECTION 2.** In Colorado Revised Statutes, 16-4-104, **amend** (1)
6 introductory portion as follows:

7 **16-4-104. Types of bond set by the court.** (1) The court shall
8 determine, after consideration of all relevant criteria, which of the
9 following types of bond is appropriate for the pretrial release of a person
10 in custody WHO IS CHARGED WITH A FELONY OR WHO IS OTHERWISE
11 SUBJECT TO BOND, subject to the relevant statutory conditions of release
12 listed in section 16-4-105. The person may be released upon execution of:

13 **SECTION 3.** In Colorado Revised Statutes, 16-4-106, **amend** (3)
14 and (7) as follows:

15 **16-4-106. Pretrial services programs.** (3) To reduce barriers to
16 the pretrial release of persons in custody whose release on bond with
17 appropriate conditions reasonably assures court appearance and public
18 safety, all counties and cities and counties are encouraged to develop a
19 pretrial services program in consultation with the chief judge of the
20 judicial district in an effort to establish a pretrial services program that
21 may be utilized by the district court of such county or city and county.
22 ~~Any~~ EACH pretrial services program ~~must~~ MAY be established pursuant to
23 a plan formulated by a community advisory board created for such
24 purpose and appointed by the chief judge of the judicial district.
25 Membership on such community advisory board ~~must~~ MAY include, at a
26 minimum, a representative of a local law enforcement agency, a
27 representative of the district attorney, a representative of the public

1 defender, and a representative of the citizens at large. The chief judge is
2 encouraged to appoint to the community advisory board at least one
3 representative of the bail bond industry who conducts business in the
4 judicial district, which may include a bail bondsman, a bail surety, or
5 other designated bail industry representative. The plan formulated by ~~such~~
6 THE community advisory board ~~must~~ MAY be approved by the chief judge
7 of the judicial district prior to the establishment and utilization of the
8 pretrial services program. The option contained in this section that a
9 pretrial services program be established pursuant to a plan formulated by
10 the community advisory board does not apply to any pretrial services
11 program that existed before May 31, 1991.

12 (7) For the reports required in subsection (6) of this section, ~~the~~
13 EACH pretrial services program shall include information detailing the
14 number of persons released on a commercial surety bond in addition to
15 pretrial supervision, the number of persons released on a cash, private
16 surety, or property bond in addition to pretrial supervision, and the
17 number of persons released on any form of a personal recognizance bond
18 ~~in addition to~~ WITH CONDITIONS OF pretrial supervision BUT NO
19 MONETARY CONDITION OF BOND.

20 **SECTION 4.** In Colorado Revised Statutes, **amend** 16-4-107 as
21 follows:

22 **16-4-107. Hearing after setting of monetary conditions of**
23 **bond.** (1) If a person is in custody and the court imposed a monetary
24 condition of bond for release, and the person, after ~~seven~~ FIVE days from
25 the setting of the monetary condition of bond, REMAINS IN CUSTODY
26 BECAUSE HE OR SHE is unable to meet the monetary obligations of the
27 bond, ~~the person may file a written motion for reconsideration of the~~

1 ~~monetary conditions of the bond. The person may only file the written~~
2 ~~motion pursuant to this section one time during the pendency of the case~~
3 ~~and may only file the written motion if he or she believes that, upon~~
4 ~~presentation of evidence not fully considered by the court, he or she is~~
5 ~~entitled to a personal recognizance bond or an unsecured bond with~~
6 ~~conditions of release or a change in the monetary conditions of bond. The~~
7 ~~court shall promptly conduct a hearing on this motion for reconsideration,~~
8 ~~but the hearing must be held within fourteen days after the filing of the~~
9 ~~motion. However, the court may summarily deny the motion if the court~~
10 ~~finds that there is no additional evidence not fully considered by the court~~
11 ~~presented in the written motion. In considering the motion, the court shall~~
12 ~~consider the results of any empirically developed risk assessment~~
13 ~~instrument~~ UPON MOTION OF THE PERSON, THE COURT SHALL FORTHWITH
14 CONDUCT A HEARING TO RECONSIDER THE MONETARY CONDITION OF THE
15 BOND. IN RECONSIDERING THE MONETARY CONDITION OF THE BOND, THE
16 COURT SHALL CONSIDER THE RESULTS OF ANY EMPIRICALLY DEVELOPED
17 RISK-ASSESSMENT INSTRUMENT, IF SUCH AN INSTRUMENT IS AVAILABLE,
18 AND DETERMINE IF A MONETARY CONDITION OF BOND IS NECESSARY AND
19 APPROPRIATE TO ENSURE THE PERSON'S APPEARANCE IN COURT OR TO
20 PROTECT PUBLIC SAFETY CONSIDERING THE DEFENDANT'S FINANCIAL
21 CIRCUMSTANCES, THE STATUTORY PRESUMPTION OF RELEASE, AND THE
22 PROPRIETY OF DETAINING A PERSON BECAUSE OF HIS OR HER INABILITY TO
23 PAY A MONETARY CONDITION OF BOND.

24 (2) Nothing in this section ~~shall preclude~~ PRECLUDES a person
25 from ~~filing a motion for relief from~~ REQUESTING MODIFICATION OF a
26 monetary condition of bond pursuant to section 16-4-109 at any time
27 during the pendency of the case.

1 **SECTION 5.** In Colorado Revised Statutes, **amend** 16-4-113 as
2 follows:

3 **16-4-113. No monetary bond in misdemeanor cases - signed**
4 **release agreements.** (1) ~~In exercising the discretion mentioned in section~~
5 ~~16-4-104, the judge shall release the accused person upon personal~~
6 ~~recognizance if the charge is a class 3 misdemeanor or a petty offense, or~~
7 ~~any unclassified offense for a violation of which the maximum penalty~~
8 ~~does not exceed six months' imprisonment, and he or she shall not be~~
9 ~~required to supply a surety bond, or give security of any kind for his or~~
10 ~~her appearance for trial other than his or her personal recognizance unless~~
11 ~~one or more of the following facts are found to be present:~~

12 ~~(a) The arrested person fails to sufficiently identify himself or~~
13 ~~herself; or~~

14 ~~(b) The arrested person refuses to sign a personal recognizance;~~
15 ~~or~~

16 ~~(c) The continued detention or posting of a surety bond is~~
17 ~~necessary to prevent imminent bodily harm to the accused or to another;~~
18 ~~or~~

19 ~~(d) The arrested person has no ties to the jurisdiction of the court~~
20 ~~reasonably sufficient to assure his or her appearance, and there is~~
21 ~~substantial likelihood that he or she will fail to appear for trial if released~~
22 ~~upon his or her personal recognizance; or~~

23 ~~(e) The arrested person has previously failed to appear for trial for~~
24 ~~an offense concerning which he or she had given his written promise to~~
25 ~~appear; or~~

26 ~~(f) There is outstanding a warrant for his or her arrest on any other~~
27 ~~charge or there are pending proceedings against him or her for suspension~~

1 ~~or revocation of parole or probation~~ EXCEPT IN THE CASE OF A
2 MISDEMEANOR FOR WHICH THE UNDERLYING ACT WAS AN ACT OF
3 DOMESTIC VIOLENCE, AS DEFINED IN SECTION 18-6-800.3 (1); A CASE
4 INVOLVING ASSAULT IN THE THIRD DEGREE, AS DESCRIBED IN SECTION
5 18-3-204; A CASE OF VIOLATION OF A PROTECTION ORDER, AS DESCRIBED
6 IN SECTION 18-6-803.5; A CASE OF CHILD ABUSE, AS DESCRIBED IN SECTION
7 18-6-401; OR A CASE OF SEXUAL ASSAULT, AS DESCRIBED IN SECTION
8 18-3-404, A COURT SHALL NOT REQUIRE A DEFENDANT ARRESTED AND
9 CHARGED FOR ANY MISDEMEANOR, PETTY OFFENSE, OR MUNICIPAL CODE
10 VIOLATION TO POST MONETARY BAIL AS A CONDITION OF BEING
11 DISCHARGED FROM CUSTODY.

12 (2) A DEFENDANT WHO IS CHARGED WITH AN OFFENSE OTHER
13 THAN A FELONY MAY NOT BE RELEASED FROM CUSTODY UNDER HIS OR HER
14 OWN RECOGNIZANCE UNTIL HE OR SHE SIGNS AND FILES WITH THE CLERK
15 OF THE COURT OR OTHER DESIGNATED PERSON A WRITTEN RELEASE
16 AGREEMENT THAT INCLUDES:

17 (a) THE DEFENDANT'S PROMISE TO APPEAR AT ALL TIMES AND
18 PLACES, AS ORDERED BY THE COURT;

19 (b) THE DEFENDANT'S PROMISE TO OBEY ALL CONDITIONS IMPOSED
20 BY THE COURT;

21 (c) THE DEFENDANT'S PROMISE TO NOT LEAVE THE STATE WITHOUT
22 THE PERMISSION OF THE COURT;

23 (d) AN AGREEMENT BY THE DEFENDANT TO WAIVE EXTRADITION
24 IF HE OR SHE FAILS TO APPEAR AS REQUIRED AND IS APPREHENDED
25 OUTSIDE COLORADO; AND

26 (e) THE ACKNOWLEDGMENT OF THE DEFENDANT THAT HE OR SHE
27 HAS BEEN INFORMED OF THE CONSEQUENCES AND PENALTIES APPLICABLE

1 TO VIOLATION OF THE CONDITIONS OF RELEASE.

2 **SECTION 6. Act subject to petition - effective date.** This act
3 takes effect at 12:01 a.m. on the day following the expiration of the
4 ninety-day period after final adjournment of the general assembly (August
5 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
6 referendum petition is filed pursuant to section 1 (3) of article V of the
7 state constitution against this act or an item, section, or part of this act
8 within such period, then the act, item, section, or part will not take effect
9 unless approved by the people at the general election to be held in
10 November 2018 and, in such case, will take effect on the date of the
11 official declaration of the vote thereon by the governor.