

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

SECOND ENGROSSED

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

LLS NO. 18-0687.01 Richard Sweetman x4333

HOUSE BILL 18-1089

HOUSE SPONSORSHIP

Benavidez,

SENATE SPONSORSHIP

Fields,

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.

HOUSE
Amended 2nd Engrossed
March 26, 2018

HOUSE
Amended 2nd Reading
March 13, 2018

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

3 **SECTION 1.** In Colorado Revised Statutes, 16-4-106, **amend** (3)
4 and (7) as follows:

5 **16-4-106. Pretrial services programs.** (3) To reduce barriers to
6 the pretrial release of persons in custody whose release on bond with
7 appropriate conditions reasonably assures court appearance and public
8 safety, all counties, ~~and~~ ALL cities and counties, AND ALL MUNICIPALITIES
9 are encouraged to develop a pretrial services program in consultation with
10 the chief judge of the judicial district in an effort to establish a pretrial
11 services program that may be utilized by the district court of such
12 DISTRICT, county, ~~or~~ city and county, OR MUNICIPALITY. ~~Any~~ EACH
13 pretrial services program ~~must~~ MAY be established pursuant to a plan
14 formulated by a community advisory board created for such purpose and
15 appointed by the chief judge of the judicial district. Membership on such
16 community advisory board ~~must~~ MAY include, at a minimum, a

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

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

23 **SECTION 2.** In Colorado Revised Statutes, **amend** 16-4-107 as
24 follows:

25 **16-4-107. Hearing after setting of monetary conditions of**
26 **bond.** (1) (a) If a person is in custody and the court imposed a monetary
27 condition of bond for release, and the person, after ~~seven~~ FIVE days from

1 the setting of the monetary condition of bond, REMAINS IN CUSTODY
2 BECAUSE HE OR SHE is FINANCIALLY unable to meet the monetary
3 obligations of the bond SET, the person may file a written motion for
4 reconsideration of the monetary conditions of the bond. The person may
5 only file the written motion pursuant to this section one time during the
6 pendency of the case and may only file the written motion if he or she
7 believes that, upon presentation of evidence not fully considered by the
8 court, he or she is entitled to a personal recognizance bond or an
9 unsecured bond with conditions of release or a change in the monetary
10 conditions of bond. The court shall promptly conduct a hearing on this
11 motion for reconsideration, but the hearing must be held within fourteen
12 days after the filing of the motion. However, the court may summarily
13 deny the motion if the court finds that there is no additional evidence not
14 fully considered by the court presented in the written motion. In
15 considering the motion, the court shall consider the results of any
16 empirically developed risk assessment instrument THE COURT, UPON
17 WRITTEN OR ORAL MOTION OF THE PERSON, SHALL PROVIDE THE PERSON
18 A HEARING TO RECONSIDER THE MONETARY CONDITION OF THE BOND. THE
19 COURT SHALL GRANT THE PERSON AT LEAST ONE HEARING ON A MOTION
20 FILED PURSUANT TO THIS SECTION AS SOON AS PRACTICABLE AFTER THE
21 FILING OF THE MOTION. IN RECONSIDERING THE MONETARY CONDITION OF
22 THE BOND, THE COURT SHALL SPECIFICALLY CONSIDER:

23 (I) THE PERSON'S FINANCIAL CIRCUMSTANCES, AS EVIDENCED BY
24 HIS OR HER INABILITY TO PAY A MONETARY CONDITION OF BOND;

25 (II) THE PROPRIETY OF THE CONTINUED DETENTION OF THE PERSON
26 BECAUSE OF EVIDENCE ESTABLISHING HIS OR HER INABILITY TO PAY A
27 MONETARY CONDITION OF BOND; AND

1 (III) WHETHER THE SENTENCE IS LIKELY TO BE A PROBATION
2 SENTENCE OR OTHER COMMUNITY-BASED SENTENCE IF THE PERSON IS
3 FOUND GUILTY.

4 (b) AT ANY HEARING, THE COURT MAY ALSO CONSIDER ANY
5 RELEVANT FACTORS, AS PROVIDED IN SECTION 16-4-103, THAT WERE
6 ORIGINALLY CONSIDERED BY THE COURT IN BOND SETTING AND THE
7 STATEMENT OF ANY VICTIM PROVIDED TO THE COURT PURSUANT TO
8 SECTION 24-4.1-302.5 (1)(d)(I).

9 (2) Nothing in this section ~~shall preclude~~ PRECLUDES OR
10 PROHIBITS a person from filing a ~~motion for relief from~~ AN APPLICATION
11 FOR MODIFICATION OF a monetary condition of bond pursuant to section
12 16-4-109 at any time during the pendency of the case.

13 **SECTION 3.** In Colorado Revised Statutes, **amend** 16-4-113 as
14 follows:

15 **16-4-113. No monetary bond in misdemeanor cases - signed**
16 **release agreements.** (1) ~~In exercising the discretion mentioned in section~~
17 ~~16-4-104, the judge shall release the accused person upon personal~~
18 ~~recognizance if the charge is a class 3 misdemeanor or a petty offense, or~~
19 ~~any unclassified offense for a violation of which the maximum penalty~~
20 ~~does not exceed six months' imprisonment, and he or she shall not be~~
21 ~~required to supply a surety bond, or give security of any kind for his or~~
22 ~~her appearance for trial other than his or her personal recognizance unless~~
23 ~~one or more of the following facts are found to be present:~~

24 (a) ~~The arrested person fails to sufficiently identify himself or~~
25 ~~herself; or~~

26 (b) ~~The arrested person refuses to sign a personal recognizance;~~
27 ~~or~~

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

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

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

11 ~~(f) There is outstanding a warrant for his or her arrest on any other~~
12 ~~charge or there are pending proceedings against him or her for suspension~~
13 ~~or revocation of parole or probation~~ EXCEPT IN THE CASE OF A PERSON
14 WHO IS CHARGED WITH AN OFFENSE DESCRIBED IN SECTION 42-4-1301
15 AFTER HAVING PREVIOUSLY BEEN CONVICTED OF ONE OR MORE SUCH
16 OFFENSES, OR A PERSON WHO IS CHARGED WITH AN OFFENSE THAT IS A
17 CRIME, AS DEFINED IN SECTION 24-4.1-302 (1), OR ANY COMPARABLE
18 MUNICIPAL CODE VIOLATION, ANY PERSON ALLEGED TO HAVE COMMITTED
19 A MISDEMEANOR, PETTY OFFENSE, OR MUNICIPAL CODE VIOLATION MUST
20 BE RELEASED ON A PERSONAL RECOGNIZANCE BOND WITH NO MONETARY
21 CONDITIONS OF RELEASE. HOWEVER, THE COURT MAY REQUIRE A
22 MONETARY CONDITION OF BOND AS WELL AS OTHER LEAST RESTRICTIVE
23 CONDITIONS OF BOND, AS DESCRIBED IN THIS SECTION, IF THE COURT
24 DETERMINES, IN WRITING OR ON THE RECORD, BY A CLEAR AND
25 CONVINCING STANDARD, AFTER REVIEW OF THE RESULTS OF ANY
26 EMPIRICALLY DEVELOPED RISK ASSESSMENT INSTRUMENT, IF AVAILABLE,
27 OR ANY RECORD OF BEHAVIOR OF THE PERSON DEMONSTRATING

1 SIGNIFICANT PRIOR CRIMINAL CONVICTIONS OR PRIOR FAILURES TO APPEAR
2 FOR COURT, THAT THE PERSON PRESENTS A SUBSTANTIAL RISK:

3 (a) OF FLIGHT FROM PROSECUTION;

4 (b) TO THE SAFETY OF ANOTHER PERSON OR PERSONS, KNOWN OR
5 UNKNOWN; OR

6 (c) TO HARASS OR INTIMIDATE A VICTIM OR WITNESS.

7 (2) THE COURT SHALL REQUIRE ANY PERSON WHO IS GRANTED A
8 PERSONAL RECOGNIZANCE BOND PURSUANT TO THE PROVISIONS OF THIS
9 SECTION TO SIGN AND FILE WITH THE COURT A WRITTEN RELEASE
10 AGREEMENT THAT INCLUDES:

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

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

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

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

20 (e) THE ACKNOWLEDGMENT OF THE DEFENDANT THAT HE OR SHE
21 HAS BEEN INFORMED OF THE CONSEQUENCES AND PENALTIES APPLICABLE
22 TO VIOLATION OF THE CONDITIONS OF RELEASE.

23 **SECTION 4. Act subject to petition - effective date.** This act
24 takes effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly (August
26 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
27 referendum petition is filed pursuant to section 1 (3) of article V of the

1 state constitution against this act or an item, section, or part of this act
2 within such period, then the act, item, section, or part will not take effect
3 unless approved by the people at the general election to be held in
4 November 2018 and, in such case, will take effect on the date of the
5 official declaration of the vote thereon by the governor.