

Proposition 102 Criteria for Release to Pretrial Services Programs

1 **Proposition 102 proposes amending the Colorado statutes to:**

- 2 ◆ prohibit the release of a defendant on an unsecured bond to supervision
3 by a pretrial services program unless that defendant is arrested for his
4 or her first offense that is also a nonviolent misdemeanor.

5 **Summary and Analysis**

6 In the United States, an individual accused of a crime is innocent until proven
7 guilty. Most defendants have the right to be released on bail that is not excessive
8 rather than remaining in jail pending the outcome of a trial. However, some serious
9 crimes are not bailable offenses under Colorado law, including murder, kidnapping,
10 and treason. In addition, persons arrested for a violent crime who have been
11 previously convicted of a violent crime, or who are out on bail for a violent offense, are
12 also not eligible for bail.

13 ***Definition of bail and bond.*** After an individual is arrested, the court sets the
14 amount of bail, the type of bond, and any other conditions of release. The primary
15 purpose of bail is to ensure that the defendant appears for trial. A bond is an
16 agreement between the defendant and the court under which the defendant agrees to
17 comply with all of the conditions of release and to pay the bail amount if he or she
18 does not appear in court.

19 The court may order one of two types of bonds, unsecured or secured. With an
20 unsecured bond, the defendant is released on his or her promise to appear, but is
21 required to pay the bail amount if he or she does not appear in court. With a secured
22 bond, the defendant either pays, or promises to pay through a commercial bail
23 bondsman, an amount of money or interest in property before he or she may be
24 released from jail pending trial. Although there are judicial district guidelines for
25 setting bail, the court has the discretion to set the amount of bail and type of bond on
26 a case-by-case basis after considering criteria set forth in law.

27 If the defendant cannot afford to pay the bail amount, he or she can pay a fee to
28 get a bond through a commercial bail bondsman, secure a bond using real estate, or
29 remain in jail. In addition to financial conditions, the court may order any number of
30 other conditions of release, which could include supervision by a pretrial services
31 program.

32 ***Pretrial services programs.*** Under current Colorado law, most defendants
33 qualify for release to supervision by a pretrial services program on either a secured or
34 unsecured bond. There are ten pretrial services programs that are publicly funded
35 and serve over 70 percent of the state's population. The programs are located
36 primarily along the Front Range, with the exceptions of Weld, Pueblo, and Mesa

1 counties. Pretrial services programs provide two primary functions. First, they assess
2 defendants and provide information and recommendations to the court regarding the
3 defendant's risk to public safety and the likelihood that he or she will appear in court.
4 The court uses this information in setting the defendant's amount of bail and type of
5 bond.

6 Second, pretrial services programs provide community-based supervision to
7 monitor defendants prior to trial through various methods, such as periodic visits with
8 the defendant, drug testing, and substance abuse treatment. Failure to comply with
9 the pretrial services conditions may result in the defendant being returned to jail while
10 awaiting trial.

11 **Proposition 102.** Currently, the court may release the defendant to supervision
12 by a pretrial services program on an unsecured or secured bond. Under
13 Proposition 102, the defendant may only be released to a pretrial services program on
14 an unsecured bond if the offense for which he or she has been charged is his or her
15 first offense and is also a nonviolent misdemeanor. A misdemeanor is a crime, less
16 serious than a felony, punishable by a fine and a term of imprisonment in a city or
17 county jail as opposed to a state prison. In all other cases where the defendant
18 receives pretrial services, the court must order a secured bond. This measure does
19 not prohibit the court from releasing the defendant on an unsecured bond without
20 pretrial services.

21 **Argument For**

22 1) Guaranteeing that all criminal defendants are tried in a court of law is a
23 fundamental part of our justice system. Requiring a secured bond from individuals
24 accused of crimes provides an added incentive for them to appear in court, where
25 victims have the opportunity to confront the accused. Taxpayer money is invested in
26 pretrial services programs to ensure that defendants face trial. Therefore, it is
27 appropriate to expect the defendant's own money to be invested in his or her promise
28 to appear, especially when he or she is charged with a violent or sexual crime.

29 **Argument Against**

30 1) Proposition 102 is unnecessary because pretrial services programs have
31 proven to be an effective method of supervising defendants and ensuring that they
32 appear for trial. The measure also unfairly burdens the poor because it will likely
33 result in poorer defendants being jailed while awaiting trial and wealthier defendants
34 being released, even if the defendants have been charged with the same type of
35 crime. Currently, pretrial services programs address this inequity by providing
36 conditions of release that may be met regardless of the financial circumstances of the
37 defendants. Under Proposition 102, defendants who would be released to pretrial
38 services programs but who cannot afford a secured bond will remain in jail awaiting
39 trial at a greater cost to taxpayers.

Blue Book

1 **Estimate of Fiscal Impact**

2 The measure will increase the time spent in jail for defendants who need to obtain
3 financing for a secured bond or for those defendants who cannot obtain financing and
4 must remain in jail until trial. Based on the state reimbursement rate for local jails of
5 \$50.44 per person per day, it is estimated that the measure will increase the annual
6 statewide cost for local jails by about \$2.8 million beginning in budget year 2010-11.
7 There are two driving forces for this increase. National data indicates that it takes
8 about eight days for defendants with a secured bond to obtain financing for release as
9 opposed to those who are released immediately on an unsecured bond. Additionally,
10 about 30 percent of defendants with a secured bond never obtain the financing to
11 secure release. This increase in demand for local jails could result in a need for
12 building additional jail beds in the future. The measure may decrease the need for or
13 the use of pretrial services programs, and the money that was previously used to fund
14 those programs could be used to offset a portion of the additional jail operating costs.