

**Proposition ?**  
**Criteria for Release to Pretrial Services Programs**

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

- 2       ♦ allow only a defendant who is arrested for a first nonviolent  
3       misdemeanor offense to be released on an unsecured bond to a pretrial  
4       services program.

6 **Summary and Analysis**

7       Several provisions of the U.S. and Colorado Constitutions guarantee that an  
8       individual accused of a crime is innocent until proven guilty and provide specific due  
9       process rights, including the right to bail that is not excessive.

10       **Definition of bail and bond.** After an individual is arrested, a judge sets the  
11       amount of bail. A bond is an agreement between a defendant and the court outlining  
12       the terms of release, including if and how bail will be paid. The bail is forfeited if a  
13       defendant fails to appear in court.

14       The judge may order one of two types of bonds, secured or unsecured. A bond  
15       can be secured by cash, property, or surety (bail bondsman) or unsecured by a  
16       defendant's promise to appear for trial. As part of the conditions of the bond, a judge  
17       may also release a defendant to a pretrial services program.

18       **Pretrial services programs.** Under current Colorado law, most defendants may  
19       qualify for release to a pretrial services program. Currently, 10 counties offer pretrial  
20       services programs. Pretrial services programs provide two primary functions. The  
21       first is to assess defendants and provide information and recommendations to the  
22       judge regarding the likelihood that a defendant will appear in court and his or her risk  
23       to public safety. The judge uses this information in setting the defendant's amount of  
24       bail and type of bond.

25       Pretrial services programs also provide community-based supervision to monitor  
26       defendants prior to trial through various methods, such as periodic visits with the  
27       defendant, drug testing, and substance abuse treatment. Failure to comply with the  
28       pretrial services conditions may result in a defendant being returned to jail.

29       **Proposition ?.** Currently, judges may release a defendant to a pretrial services  
30       program on an unsecured bond rather than ordering a defendant to pay a secured  
31       bond. Under Proposition ?, judges may only release a defendant to a pretrial services  
32       program on an unsecured bond if it is the defendant's first offense for a nonviolent  
33       misdemeanor. A misdemeanor is a crime, less serious than a felony, punishable by a  
34       fine and a term of imprisonment in a city or county jail as opposed to a state prison. In  
35       all other cases where the defendant receives pretrial services, the judge must order

1 that the defendant pay a secured bond. This measure does not prohibit a judge from  
2 releasing a defendant on an unsecured bond without pretrial services.

3 **Arguments For**

4 1) Defendants who only receive pretrial services without paying a secured bond  
5 are more likely to skip their court dates. Requiring defendants to post a secured bond  
6 provides a financial incentive to appear in court. Pretrial services programs duplicate  
7 many of the functions of the private bail sector, which ensures defendants appear in  
8 court at no cost to the taxpayers.

9 **Arguments Against**

10 1) Proposition ? will leave those defendants who cannot afford a secured bond  
11 with no option other than to remain in jail awaiting trial. This will result in poor  
12 individuals being jailed and those who can afford a secured bond being released, even  
13 if the defendants have been charged with the same crime. Placing more defendants  
14 in jail pending trial instead of in pretrial services programs will cost more taxpayer  
15 dollars.

16 **Estimate of Fiscal Impact**