

Initiative #92
Criteria for Release to Pretrial Services Programs

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

- 2 ♦ prohibit the release of a defendant on an unsecured bond to a pretrial
3 services program unless that defendant is arrested for a first offense
4 that is also a nonviolent misdemeanor.
5

6 **Summary and Analysis**

7 In the United States, an individual accused of a crime is innocent until proven
8 guilty. Most defendants have the right to be released on bail that is not excessive
9 rather than remaining in jail pending the outcome of a trial. However, several serious
10 crimes are notailable offenses under Colorado law.

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

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

24 If the defendant cannot afford to pay the bail amount, he or she can either remain
25 in jail or pay a fee to get a bond through a commercial bail bondsman. In addition to
26 financial conditions, the court may order any number of other conditions of release,
27 which could include supervision by a pretrial services program.

28 **Pretrial services programs.** Under current Colorado law, most defendants
29 qualify for release to a pretrial services program. There are ten pretrial services
30 programs that are publicly funded and serve over 70 percent of the state's population.
31 The programs are located primarily along the Front Range, with the exceptions of
32 Weld, Pueblo, and Mesa counties. Pretrial services programs provide two primary
33 functions. First, they assess defendants and provide information and
34 recommendations to the court regarding the defendant's risk to public safety and the
35 likelihood that he or she will appear in court. The court uses this information in setting
36 the defendant's amount of bail and type of bond.

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

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

15 **Argument For**

16 1) Guaranteeing that all criminal defendants are tried in a court of law is a
17 fundamental part of our justice system. Requiring a secured bond from individuals
18 accused of crimes, in addition to any other conditions of release, provides an added
19 incentive to appear in court. Taxpayer money is invested in pretrial services programs
20 to ensure that defendants face trial. Therefore, it is appropriate to expect the
21 defendant's own money to be invested in his or her promise to appear.

22 **Argument Against**

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

33 **Estimate of Fiscal Impact**

34 The measure will increase the time spent in jail for defendants who need to obtain
35 financing for a secured bond or for those defendants who cannot obtain financing and
36 must remain in jail until trial. Based on the state reimbursement rate for local jails of
37 \$50.44 per person per day, it is estimated that the measure will increase the annual
38 statewide cost for local jails by about \$2.8 million beginning in budget year 2010-11.

1 There are two driving forces for this increase. National data indicates that it takes
2 about eight days for defendants with a secured bond to obtain financing for release as
3 opposed to those who are released immediately on an unsecured bond. Additionally,
4 about 30 percent of defendants with a secured bond never obtain the financing to
5 secure release. This increase in demand for local jails could result in a need for
6 building additional jail beds in the future. The measure may decrease the need for or
7 the use of pretrial services programs, and the money that was previously used to fund
8 those programs could be used to offset a small portion of the additional jail operating
9 costs.