

**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 purpose of  
13 bail is to ensure that the defendant appears for trial. A bond is an agreement between  
14 the defendant and the court under which the defendant agrees to comply with all of  
15 the conditions of release and to pay the bail amount if he or she does not appear in  
16 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 a pretrial  
7 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 the defendant to pay a secured bond. This measure  
14 does not prohibit the court from releasing the defendant on an unsecured bond  
15 without pretrial services.

#### 16 **Argument For**

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

#### 23 **Argument Against**

24 1) All defendants deserve to have their individual circumstances considered when  
25 bond is set. The measure limits the court's options in determining conditions for  
26 release. Not all defendants can afford to pay the bail amount or the fee for a  
27 commercial bail bondsman. Proposition ? will likely result in poorer defendants being  
28 jailed while awaiting trial and wealthier defendants being released, even if the  
29 defendants have been charged with the same type of crime. Placing more defendants  
30 in jail pending trial instead of in pretrial services programs will cost more taxpayer  
31 dollars.

#### 32 **Estimate of Fiscal Impact**

33 The measure will increase the time spent in jail for arrestees who need to obtain  
34 financing for a secured bond or for those arrestees who cannot obtain financing and  
35 must remain in jail until trial. Based on the state reimbursement rate for local jails of  
36 \$50.44 per person per day, it is estimated that costs for local jails across the state will  
37 increase by about \$2.2 million beginning in budget year 2010-11. There are two  
38 driving forces for this increase. National data indicates that it takes about eight days  
39 for arrestees with a secured bond to obtain financing for release as opposed to those

1 who are released immediately on an unsecured bond. Additionally, about 30 percent  
2 of arrestees with a secured bond never obtain the financing to secure release. This  
3 increase in capacity for local jails could result in a need for building additional jail beds  
4 in the future. However, as the measure may decrease the need for pre-trial  
5 supervision, some of these costs may be offset by using money that previously had  
6 been used for those programs.