

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

20 **Argument For**

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

28 **Argument Against**

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

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
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Matt Duran, et al., Safe Streets Colorado

Initiative #92

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30 other conditions of release, which could include supervision by a pretrial services
31 program.

32 **Pretrial services programs.** Under current Colorado law, FELONY DEFENDANTS
33 AND THOSE ACCUSED OF VIOLENT CRIMES ~~most defendants~~ qualify for release to
34 supervision by a TAX FUNDED pretrial services program, IN LIEU OF A SECURED BOND. ~~on~~
35 ~~either a secured or unsecured bond.~~ ACCORDING TO THE STANDARDS FROM THE
36 NATIONAL ASSOCIATION REPRESENTING PRETRIAL SERVICES AGENCIES, THE PRIMARY

Matt Duran, et al., Safe Streets Colorado

1 FUNCTION OF PRETRIAL SERVICES PROGRAMS IS TO RELEASE ALL DEFENDANTS ON A SIMPLE
2 PROMISE TO APPEAR. There are ten pretrial services programs that are publicly funded
3 and serve over 70 percent of the state's population. The programs are located
4 primarily along the Front Range, with the exceptions of Weld, Pueblo, and Mesa
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21 opposed to a state prison. In all other cases where the defendant receives pretrial
22 services, the court must order a secured bond. This measure does not prohibit the
23 court from releasing the defendant on an unsecured bond without pretrial services.

24 **Argument For**

25 1) Guaranteeing that all criminal defendants are tried in a court of law is a
26 fundamental part of our justice system. Requiring a secured bond from individuals
27 accused of crimes provides an added incentive for them to appear in court, where
28 victims, PARTICULARLY VICTIMS OF VIOLENT CRIMES, have the opportunity to confront the
29 accused. INDIVIDUALS RELEASED TO A PRETRIAL SERVICES PROGRAM IN LIEU OF A
30 SECURED BOND ARE MORE THAN 50 PERCENT MORE LIKELY TO FAIL TO APPEAR. TENS OF
31 MILLIONS OF taxpayer DOLLARS ARE ~~money is invested in pretrial services programs, AND~~
32 DEFENDANTS IN THESE PROGRAMS IN LIEU OF SECURED BONDS ARE LESS LIKELY TO APPEAR.
33 ~~to ensure that defendants face trial.~~ Therefore, it is appropriate to expect the
34 defendant's own money to be invested in his or her promise to appear, especially
35 when he or she is charged with a violent or sexual crime. A JUDGE WOULD STILL BE
36 ABLE TO SET A BOND THAT IS NOT EXCESSIVE TO EACH DEFENDANT, BUT VIOLENT OR FELONY
37 DEFENDANTS SHOULD NOT BE RELEASED ON TAXPAYER DOLLARS.

38 **Argument Against**

39 1) Proposition ? is unnecessary because TAXPAYER FUNDED pretrial services
40 programs have proven to be an effective method of supervising defendants and

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1 ensuring that they appear for trial. The measure also unfairly burdens the poor
2 because it will likely result in poorer defendants being jailed while awaiting trial and
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23 ~~costs.~~

MATT DURAN, ET AL., SAFE STREETS COLORADO, COMMENTS ON LAST DRAFT OF INITIATIVE 92

Jessika,

1. Please see below. This is an email, sent to the safestreetscolorado email addresses of mine and Mr. Donovan's, dated June 23rd. This email is from you, apologizing that we were left off the distribution list for the first draft. This email provided us almost no time to respond.

I am now in receipt of your email this week, in which you explain that you had different email addresses. The problem, of course, is that you have had these since June. Both Cesi Gomez and Ms. Sanchez with the Secretary of State's office have updated this email information. I do not understand why this continues to be a problem, and quite frankly your email this week seemed to indicate that you believe we should have been receiving correspondence all along. However, as you can see below, you have had this email address the entire time.

Now, I am very concerned because we continue to have these communication problems and, in its third draft, the blue book proposal looks more like opponent propaganda than a balanced and fair view of proposed initiative 92. There are so many problems, including the fact that you reference a 'fiscal impact' that is based purely in fiction. You cite a per day jail cost that you know is based on fixed costs (should we presume that the jails will fire guards, or cut off power, should an inmate not be released into a tax funded system)? Also, you cite a 2million + dollar estimated fiscal impact, then state that less use of tax funded pretrial services may reduce "a small" portion of the impact. However, you fail to consider that one county (Larimer) spends nearly 2 million per year on their program. Should you extrapolate that over the 10+ programs, how could you not presume that such savings would MORE than make up for any additional jail costs.

Additionally, you cite studies referencing huge amounts of defendants who cannot post financial bonds. What source, other than a biased NPR story (cited during our blue book hearing by your team), do you have that confirms any of the numbers you reference in the 3rd draft?

This 3rd draft is far from what we would consider acceptable, and I can't see how any of our suggestions and concerns were accepted or addressed after our first comment on the 1st draft. Now, we have lost one opportunity in the process to submit, and the people of Colorado stand to be exposed to a Blue Book analysis that serves to perpetuate opposition propaganda (such as the fiscal impact analysis).

In spite of my absolute mistrust of this situation thus far, we must submit the following and aforementioned concerns about the third draft.

line 19, page 1 - "required to pay the bail amount if he or she does not appear in court." Courts in Colorado do not enforce these type of forfeitures, and this money is never collected.

line 20, page 1 - "bond, the defendant either pays, or promises to pay through a commercial bail" - defendant's also have the option, under CRS, to post property with the court. This happens often, and should be included.

line 25, page 1 - "in jail or pay a fee to get a bond through a commercial bail bondsman. In addition to" - again, the defendant may also post a property bond (it is in CRS).

line 29, page 1 - "qualify for release to a pretrial services program." - Most defendants do qualify for tax funded pretrial release programs. You should, since it is absolutely germane to the initiative, point out that under current law felony defendants and those accused of violent crimes may be released into tax funded pretrial programs, in lieu of a secured bond"

Lines 30+, page 1 - Your explanation of pretrial programs is glowing for them, but you do not underscore that they are tax funded programs that are used to release felony and violent defendants from jail in lieu of a secured bond. Reference the STANDARDS ON PRETRIAL RELEASE (NAPSA), attached. Their own document calls for the release of ALL criminal defendants on a simple promise to appear. With such a radical notion their first standard on pretrial release, perhaps the people of Colorado should be told about their standards.

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

Suggestion ----- Guaranteeing that all criminal defendants appear in court for trial or disposition of their case is a fundamental part of our criminal justice system. Victims deserve to have their cases heard in court, and this is particularly true when the crime is violent. Individuals released to a pretrial services program in lieu of secured bond are more than 50% more likely to fail to appear.(SEE EXHIBIT 2 - PUBLIC V PRIVATE ENFORCEMENT ATTACHED - PAGE 15). Tens of millions of taxpayer dollars per year are invested in pretrial services programs, and defendants in those programs in lieu of secured bonds are less likely to appear. It is more appropriate, in violent or felony cases, that criminal defendant's be compelled to invest their own resources to secure pretrial release. A Judge would still be able to set a bond that is not excessive to each defendant, but violent or felony defendants should not be released on taxpayer dollars.

ARGUMENT AGAINST - You should obviously point out that these programs are taxpayer funded.

ESTIMATE OF FISCAL IMPACT - this should be deleted entirely. See PASCO COUNTY FL STUDY, which shows that in that county, upon dismantling the county's pretrial services program, that the per capita jail population actually went DOWN. Because Judges can set bonds based on a defendant's ability to pay, your assertion that a large number of defendants would remain in jail pending trial is incorrect. Furthermore, the PASCO COUNTY FL STUDY (Attached) shows that your assumption here is invalid.

Your inference that "National Data" shows it takes 8 days for defendants to post a secured bond is ridiculous. According to a George Mason University study in 2009, most defendants bond out in 12 - 72 hours, and the difference in time between release on bond and release to a pretrial services program is negligible. Also, your suggestion that 30% of criminal defendants would remain in jail is absolutely inaccurate and fails to consider that a large number of CO counties do not have such programs. Are we to assume that heinous civil rights violations are occurring in those counties because they do not have pretrial programs?

Can you begin to understand our concern relative to how this is written. I only hope it is not too late to change. Is there an appeal process beyond the third draft? I hate the fact that this is our last (and only our second) opportunity to respond.

Thank you for your time.

Matt Duran

Safe Streets Colorado

On Wed, Jun 23, 2010 at 8:57 AM, Jessika Shipley <Jessika.Shipley@state.co.us> wrote:

Mr. Duran and Mr. Donovan,

I must apologize. You were both inadvertently left off our distribution list for drafts of this measure. It is entirely my fault. I would appreciate if you would review the language we have so far and reply as soon as possible with any comments or concerns.

Each year the Legislative Council Staff prepares a voter information booklet that includes an analysis of measures that will appear on the statewide ballot. We distribute drafts of each analysis to people who are interested in commenting on the draft. The attached document is the first draft of the Legislative Council Staff analysis of Initiative #92 - Criteria for Setting Bail and Type of Bond. The second attachment describes the process for writing each analysis.

You can simply press the reply button to send your comments via email. If you are having problems accessing the documents, please refer to: <http://www.colorado.gov/lcs/BlueBook>. The Web site contains the ballot analysis, the language of the measure, deadlines, and staff contacts.

Thank you for your assistance and, once again, I apologize for the mistake.

Regards,
Jessika

Jessika Shipley
Legislative Council Staff
(303) 866-3528
jessika.shipley@state.co.us

Andy Karsian, Colorado Counties Inc.

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7 guilty. Most defendants have the right to be released on bail that is not excessive
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Andy Karsian, Colorado Counties Inc.

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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 small portion of the additional jail operating
15 costs; HOWEVER, ANY OFFSET EXPENSES WOULD NOT COVER THE COSTS OF HOUSING
16 OFFENDERS WHO OTHERWISE WOULD HAVE ENTERED PRETRIAL SERVICES.

ANDY KARSIAN, COLORADO COUNTIES, INC., COMMENTS ON LAST DRAFT OF INITIATIVE 92

Sara –

Hello there. I'm not sure what analysis you received from the County Sheriffs on this Measure, but we appreciate the opportunity to put some comments on record. As you've most likely heard from the sheriffs and others, this would drive a significant fiscal impact for county jails. The counties are the ones responsible for housing these first time offenders and the proposed blue book Estimate of Fiscal Impact language only takes into account the costs of the state reimbursement. While this is a very legitimate fiscal impact, the county budgets will also be affected for housing more poor and mentally ill inmates, which the state is not responsible for reimbursing costs.

Currently these inmates cost metro area counties an average of \$76/day to house due to the cost of medications and additional services they receive while incarcerated. Many counties have developed effective pretrial services over the last four years that has reduced the number of mentally ill inmates in county jails. Although the costs continue to be exorbitant (\$37 million for metro counties alone in 2009 to house mentally ill inmates), counties have reduced the need to send these inmates to jail, instead developing useful pretrial diversions which keep these nonviolent offenders out of jail and in their communities.

Unfortunately, CCI only has fiscal data on how much money it costs to incarcerate the large number of non-violent, seriously mentally ill inmates in the seven metro area jails. We haven't gathered fiscal data on the additional costs saved or incurred as a result of pretrial services or lack thereof. Barring that data, and recognizing that time is short and language must be finalized soon, please consider the following suggestions which may offer voters an understanding of the complexity of the issue and how Measure #92 would increase costs for counties.

On page two lines 25, we would recommend adding the following,
“trial. The measure also unfairly burdens ~~the~~ poor AND MENTALLY ILL DEFENDANTS because it will likely result in ~~poor~~ THESE”

Additionally, we would recommend striking, on page 3, the final sentence of the Estimate of Fiscal Impact, beginning on line 6 and ending on line 9. There is no proof that any saved revenue could or would be used to offset any portion of the large additional operating costs the county jails will face if this Measure were to pass. If this sentence is to stay in we would like to see additional language added, preferably after line 9 on page 3 that said,

“costs; HOWEVER, ANY OFFSET EXPENSES WOULD NOT COVER THE COSTS OF HOUSING OFFENDERS WHO OTHERWISE WOULD HAVE ENTERED PRETRIAL SERVICES.”

Or, on page 3 line 8,

“those programs could be used to offset ONLY a small portion of the additional jail operating”

Or, on page 3, line 6

“LOCAL JAILS TO RELEASE EARLY OTHER INMATES OR build additional jail beds in the future...”

Thanks Sara. I don't envy your job, but truly appreciate the opportunity to weigh in on this. If you have questions, please don't hesitate to call.

Andy

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Sharon Winfree, Larimer County Pretrial Services

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4 or her first offense that is also a nonviolent misdemeanor; AND

5 ♦ PROHIBIT THE RECOMMENDATION THAT A DEFENDANT BE RELEASED ON AN
6 UNSECURED BOND TO SUPERVISION BY A PRETRIAL SERVICES PROGRAM
7 UNLESS THAT DEFENDANT IS ARRESTED FOR HIS OR HER FIRST OFFENSE THAT
8 IS ALSO A NONVIOLENT MISDEMEANOR.

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18 EXCESSIVE, AND WHICH HAS BEEN INDIVIDUALLY DETERMINED. IN COLORADO, NOT ALL
19 DEFENDANTS ARE GUARANTEED BAIL, BUT WHEN BAIL IS SET, IT IS NOT TO BE OPPRESSIVE.
20 THE PRESUMPTION OF INNOCENCE IS A BASIC PRINCIPAL OF LAW. COLORADO LAW
21 RECOGNIZES THAT THE BOND DECISION MUST CONSIDER BOTH THE RISK OF THE DEFENDANT
22 TO RETURN TO COURT AND THE RISK OF DANGER TO THE COMMUNITY IF THE DEFENDANT IS
23 RELEASED.

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

30 IN ADDITION TO ENSURING THAT DEFENDANTS APPEAR FOR TRIAL, SUPERVISION BY
31 PRETRIAL SERVICES PROGRAMS ALSO ADDRESSES THE CONCERNS OF RISK TO THE
32 COMMUNITY; SIMPLY REQUIRING A SECURED BOND DOES NOT. ADDITIONALLY, DEFENDANTS
33 RELEASED ON UNSECURED BONDS ALSO HAVE A FINANCIAL INCENTIVE TO APPEAR FOR
34 COURT BECAUSE THEY ARE RELEASED UPON THEIR WRITTEN AGREEMENT TO PAY THE
35 DOLLAR AMOUNT OF THE BOND IF THEY FAIL TO APPEAR IN COURT. IF THEY FAIL TO APPEAR
36 IN COURT, THE AMOUNT OF THE BOND IS FORFEITED AND ASSESSED ON THEIR CASE,

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1 WITHOUT THE RELIEF OF THE EXONERATION ALTERNATIVES ALLOWED THE COMMERCIAL
2 SURETY, WHO FREQUENTLY DOES NOT PAY THE ORDERED FORFEITURE BECAUSE THEY FILE
3 FOR EXONERATION FROM LIABILITY.

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

12 BOND IS FORFEITED ONLY UPON FAILURE TO APPEAR IN COURT. MANY BONDS ORDERED
13 FORFEITED BY COMMERCIAL SURETIES ARE LATER EXONERATED ON MOTIONS FILED BY
14 THOSE COMPENSATED SURETIES. FORFEITURE IS THE ORDER TO PAY THE AMOUNT OF
15 MONEY THAT WAS PROMISED, EITHER BY THE COMPENSATED SURETY (SECURED), OR BY THE
16 INDIVIDUAL (UNSECURED), IF THE DEFENDANT FAILS TO APPEAR IN COURT. EXONERATION IS
17 A WAY FOR A SURETY TO BE RELIEVED FROM LIABILITY TO PAY ON A BOND THEY HAVE
18 SIGNED. INDIVIDUALS POSTING BONDS DO NOT HAVE THE SAME RECOURSES PROVIDED BY
19 STATUTE TO THE COMMERCIAL SURETIES REGARDING DELAY OF FORFEITURE AND
20 EXONERATION FROM FORFEITURE. NOR ARE INDIVIDUALS ENTITLED TO A REFUND OF
21 FORFEITURE WHEN THE DEFENDANT IS ARRESTED BY LAW ENFORCEMENT WITHIN A YEAR OF
22 FORFEITURE.

23 WHEN A COMPENSATED SURETY POSTS A DEFENDANT'S BOND, THE MONEY IS NOT
24 DEPOSITED "UP FRONT" WITH THE COURT, BUT IS A PROMISE BY THE SURETY TO PAY IF THE
25 DEFENDANT FAILS TO APPEAR IN COURT, JUST AS THE UNSECURED (PERSONAL
26 RECOGNIZANCE) BOND IS A PROMISE TO APPEAR IN COURT OR FORFEIT THE AMOUNT OF THE
27 PERSONAL RECOGNIZANCE BOND, WITH THE DOLLAR AMOUNT OF THE BOND ASSESSED ON
28 THE DEFENDANT'S COURT CASE AND COLLECTED WHEN THE DEFENDANT AGAIN APPEARS ON
29 THE CASE.

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

35 **Pretrial services programs.** Under current Colorado law, most defendants
36 qualify for release to supervision by a pretrial services program on either a secured or
37 unsecured bond. There are ten pretrial services programs that are publicly funded
38 and serve over 70 percent of the state's population. The programs are located
39 primarily along the Front Range, with the exceptions of Weld, Pueblo, and Mesa
40 counties. Pretrial services programs provide two primary functions. ~~First, they assess~~
41 ~~defendants and provide information and recommendations to the court regarding the~~
42 ~~defendant's risk to public safety and the likelihood that he or she will appear in court.~~
43 ~~The court uses this information in setting the defendant's amount of bail and type of~~
44 ~~bond.~~ ONE OF THE FUNCTIONS OF PRETRIAL SERVICES PROGRAMS IS TO SCREEN,

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1 INTERVIEW, INVESTIGATE, VERIFY, APPLY OBJECTIVE RISK CRITERIA AND MAKE WRITTEN
2 RECOMMENDATIONS TO THE JUDGE REGARDING THE PRETRIAL RELEASE DECISION OF A
3 DEFENDANT. THE DETERMINATION OF THE AMOUNT OF BAIL AND THE TYPE OF BOND TO BE
4 FURNISHED BY THE DEFENDANT IS GOVERNED BY CRITERIA SPECIFIED IN LAW. THIS
5 MEASURE WILL:

- 6 • PREVENT THE USE OF THE SCREENS, ASSESSMENTS, INVESTIGATIVE
7 INFORMATION, AND STATUTORILY REQUIRED CRITERIA IN MAKING
8 RECOMMENDATIONS TO THE JUDGE REGARDING PRETRIAL RELEASE; AND
- 9 • PREVENT THE JUDGE FROM USING THAT INFORMATION TO DETERMINE THE
10 APPROPRIATE BAIL, BOND TYPE, AND CONDITIONS OF BOND FOR THE
11 DEFENDANT.

12 ~~Second~~, THE SECOND FUNCTION OF pretrial services programs is to provide
13 community-based supervision to monitor ~~defendants~~ DEFENDANT BEHAVIORS prior to
14 trial through various methods, such as periodic visits with the defendant, drug testing,
15 ELECTRONIC MONITORING, and substance abuse treatment. THESE METHODS ARE
16 IDENTIFIED IN STATE LAW. THE MEASURE ADDS THE POSTING OF A CASH, PROPERTY, OR
17 PROFESSIONAL SURETY BOND TO THE SUPERVISION METHODS OF A PRETRIAL SERVICES
18 PROGRAM, FOR A DEFENDANT CHARGED WITH HIS OR HER FIRST OFFENSE THAT IS ALSO A
19 NONVIOLENT MISDEMEANOR, WHEN APPROPRIATE. THE MEASURE DOES NOT DEFINE THE
20 PHRASE "WHEN APPROPRIATE," AND BECAUSE THIS ITEM IS ADDED TO THE ESTABLISHED
21 SUPERVISION METHODS WHICH MAY BE UTILIZED BY PRETRIAL SERVICES PROGRAMS, IT
22 APPEARS TO DELEGATE THE AUTHORITY TO CHANGE A BOND SET BY THE JUDGE AND REQUIRE
23 THE POSTING OF A SECURED BOND TO A PRETRIAL SERVICES PROGRAM, IF THE PROGRAM
24 FEELS THAT IT IS "APPROPRIATE." CURRENT LAW REQUIRES A JUDGE TO SET THE BAIL
25 AMOUNT, BOND TYPE, AND CONDITIONS OF BOND, NOT A PRETRIAL SERVICES PROGRAM.
26 Failure to comply with the pretrial services conditions may result in the defendant
27 being returned to jail while awaiting trial.

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

37 **Argument For**

38 1) Guaranteeing that all criminal defendants are tried in a court of law is a
39 fundamental part of our justice system. Requiring a secured bond from individuals
40 accused of crimes provides an added incentive for them to appear in court, where
41 victims have the opportunity to confront the accused. Taxpayer money is invested in
42 pretrial services programs to ensure that defendants face trial. Therefore, it is

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1 appropriate to expect the defendant's own money to be invested in his or her promise
2 to appear, especially when he or she is charged with a violent or sexual crime.

3 **Argument Against**

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

14 1) IN COLORADO, PRETRIAL SERVICES PROGRAMS STATEWIDE ARE VERY SUCCESSFUL
15 BECAUSE THEY HAVE FAILURE TO APPEAR (FTA) RATES ("SKIP" RATES) AVERAGING LESS
16 THAN 5 PERCENT. IN THE PAST 12 MONTHS ALONE, LARIMER COUNTY HAD AN AVERAGE FTA
17 RATE OF 1.79 PERCENT FOR THOSE DEFENDANTS UNDER PRETRIAL SERVICES SUPERVISION,
18 WHILE THOSE DEFENDANTS WITHOUT PRETRIAL SUPERVISION HAD AN FTA RATE OF
19 10.73 PERCENT. THERE IS LITTLE DUPLICATION BETWEEN THE FUNCTIONS OF PRETRIAL
20 SERVICES PROGRAMS AND THOSE OF THE PRIVATE COMPENSATED BAIL SECTOR, WHICH
21 MAKES ITS PROFIT-MOTIVATED DECISION BASED UPON A DEFENDANT'S ACCESS TO MONEY,
22 WHILE PRETRIAL SERVICES PROGRAMS SCREEN, INTERVIEW, INVESTIGATE, VERIFY, APPLY
23 OBJECTIVE RISK CRITERIA, REPORT, AND PROVIDE INFORMATION FOR INFORMED BOND
24 DECISIONS TO BE MADE BY THE COURTS. ADDITIONALLY, PRETRIAL SERVICES PROGRAMS
25 MONITOR, SUPERVISE, AND PROVIDE WRITTEN DOCUMENTATION OF COMPLIANCE WITH
26 CONDITIONS OF BOND TO THE COURTS. PART OF THESE FUNCTIONS PROVIDE THE JUDGE
27 WITH THE STATUTORILY REQUIRED INFORMATION TO USE FOR INFORMED BOND DECISIONS
28 AND OTHERS ADVISE THE JUDGE OF COMPLIANCE WITH BOND CONDITIONS THAT IMPACT
29 COMMUNITY SAFETY.

30 ADDITIONALLY, THE COST TO THE TAXPAYERS FOR THE INCREASE IN THE NUMBER OF
31 SECURED BONDS CAN BE EXPONENTIAL AS THOSE WHO CANNOT POST THE FINANCIAL BOND
32 REMAIN IN JAIL AND INCREASE THE NEED FOR SECURE JAIL BEDS AT HUGE EXPENSE TO THE
33 TAXPAYER. ADDITIONALLY, THE TAXPAYER SHOULDERS THE BURDEN FOR THE COSTS OF
34 SOCIAL PROGRAMS TO SUPPORT FAMILIES WHOSE BREADWINNER REMAINS IN JAIL, AND THE
35 LOSS OF EMPLOYMENT FOR DEFENDANTS WHO REMAIN IN CUSTODY NEGATIVELY IMPACTS
36 THE TAX BASE WHEN THOSE WAGES NO LONGER FLOW THROUGH THE COMMUNITY.

37 NO DEFENDANT, WEALTHY OR POOR, SHOULD HAVE TO REMAIN IN JAIL OR BE FORCED TO
38 BUY THEIR WAY OUT OF JAIL, PARTICULARLY WHEN THE JUDGE HAS DETERMINED THAT THE
39 APPROPRIATE BOND SHOULD BE NONFINANCIAL, AND ANY CONCERNS FOR COMMUNITY
40 SAFETY OR RETURN TO COURT COULD HAVE BEEN ADDRESSED THROUGH SUPERVISION BY A
41 PRETRIAL SERVICES PROGRAM. THE MEASURE FORCES JUDGES TO ADD A FINANCIAL
42 CONDITION OF BOND WHENEVER THEY WANT PRETRIAL SUPERVISION.

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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. THE COST PER DAY FOR PROVIDING PRETRIAL SUPERVISION IS
5 LESS THAN 2 PERCENT OF THE COST PER DAY TO MAINTAIN A DEFENDANT IN JAIL, WHICH IS
6 ABOUT \$100 PER DAY. BASED ON AN ESTIMATE OF \$100 PER DAY, FOR LARIMER COUNTY
7 ALONE THE MEASURE IS PROJECTED TO COST BETWEEN \$2 MILLION AND \$4.3 MILLION PER
8 YEAR. ~~Based on the state reimbursement rate for local jails of \$50.44 per person per~~
9 ~~day, it is estimated that the measure will increase the annual statewide cost for local~~
10 ~~jails by about \$2.8 million beginning in budget year 2010-11.~~ There are two driving
11 forces for this increase. National data indicates that it takes about eight days for
12 defendants with a secured bond to obtain financing for release as opposed to those
13 who are released immediately on an unsecured bond. Additionally, about 30 percent
14 of defendants with a secured bond never obtain the financing to secure release. This
15 increase in demand for local jails could result in a need for building additional jail beds
16 in the future, AT AN ESTIMATED COST OF OVER \$100,000 PER BED. ~~The measure may~~
17 ~~decrease the need for or the use of pretrial services programs, and the money that~~
18 ~~was previously used to fund those programs could be used to offset a small portion of~~
19 ~~the additional jail operating costs.~~

SHARON WINFREE, LARIMER COUNTY PRETRIAL SERVICES, COMMENTS ON LAST DRAFT OF INITIATIVE 92

Proposition ? proposes amending the Colorado statutes to:

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

Comments – Statement of Proposal:

1. Not only does this proposal limit the ability of the judicial officer to release defendants on the bond type, and with the conditions, that they have found to be appropriate, but it also seeks to prevent even the recommendation for “release to a pretrial services program, in lieu of a Cash, Property or Professional Surety Bond”. It appears that the proposal has a dual subject:
 - 1) The proposal seeks to limit the judges’ release decision by defining who judges can “release to supervision by a pretrial services program, in lieu of a Cash, Property or Professional Surety Bond”. It also conflicts with the provisions of 16-4-105 (1)(2)(3) (a)(b)(c) C.R.S. which carefully outlines the criteria the Judge is required to consider *(1) In determining the amount of bail and the type of bond to be furnished by the defendant, the judge fixing the same **shall consider and be governed by** the following criteria*
 - 2) The proposal also seeks to limit who “can be recommended for release “. The proposal does not indicate where the recommendations come from. Recommendations to the Judge for bond and conditions of bond are usually made by Pretrial Service Intake Officers who have completed the defendant interview, investigation and assessment of risk, or by District Attorneys who are representing victims and the People at Advisement/Bond Hearing, or by Defense Attorneys representing the interests of their clients. Thus, the proposal seeks not only to limit the Judges’ release decision of who and how a defendant is to be released, but has a second purpose, which is to limit the ability of defense and prosecuting attorneys to make recommendations to the Court at a bond hearing for unsecured bond with supervision by a Pretrial Services Program. This limits their ability to fully represent the issues of their clients, victims or the People appropriately. Further, it would impede the application of evidence based practices and risk assessments which are applied in determining the appropriate type of bond and appropriate release conditions for a particular defendant.
- Use of **first offense** could imply that the defendant could have prior violent misdemeanors or felonies, but could be recommended for and released on unsecured bond with pretrial supervision because the offense is the first nonviolent misdemeanor they have incurred. The ballot initiative uses the terminology of: “ for their first offense...”, which is confusing by not defining “offense” as an arrest, charge, summons, or conviction. It also appears from the language of the ballot initiative that any defendant, regardless of offense, can be considered for unsecured bond – as long as they do not have supervision by a Pretrial Services Program as a condition of that bond.

- Insertion of “ ...on an unsecured bond to *supervision by* a Pretrial Services program...” could clarify for the public the role that the Pretrial Services Program plays in these cases.

Summary and Analysis:

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

Comments – Summary and Analysis:

Defendants have due process rights, to be released on bail that is not excessive, and which has been individually determined. In Colorado, not all defendants are guaranteed bail, but when bail is set, it is not to be oppressive. The presumption of innocence is a basic principal of law. Colorado law recognizes that the bond decision must consider both the risk of the defendant to return to court and the risk of danger to the community if the defendant is released. The inclusion of this information in the Summary and Analysis is suggested.

Definition of Bail and bond: After an individual is arrested, the court sets the

amount of bail, the type of bond, and any other conditions of release. The primary purpose of bail is to ensure that the defendant appears for trial. A bond is an agreement between the defendant and the court under which the defendant agrees to comply with all of the conditions of release and to pay the bail amount if he or she does not appear in court.

The court may order one of two types of bonds, unsecured or secured. With an unsecured bond, the defendant is released on his or her promise to appear, but is required to pay the bail amount if he or she does not appear in court. With a secured bond, the defendant either pays, or promises to pay through a commercial bail bondsman, an amount of money or interest in property before he or she may be

released from jail pending trial. Although there are judicial district guidelines, the court has the discretion to set the amount of bail on a case-by-case basis.

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

Comments – Definition of bail and bond:

Lines 12-16: “The primary purpose of bail is to ensure that the defendant appears for trial. A bond is an agreement between the defendant and the court under which the defendant agrees to comply with all of the conditions of release and to pay the bail amount if he or she does not appear in court.”

In addition to ensuring that defendants appear for trial, supervision by Pretrial Service Programs also addresses the concerns of risk to the community; simply requiring a secure bond does not. Additionally, defendants released on unsecured bonds also have a financial incentive to appear for court because they are released upon their written agreement to pay the dollar amount of the bond if they fail to appear in court. If they fail to appear, the amount of that bond is forfeited and assessed on their case, without the relief of the exoneration alternatives allowed the commercial surety, who frequently does not pay the ordered forfeiture because they file for exoneration from liability.

Lines 22-23: “...the court has the discretion to set the amount of bail on a case-by-case basis.”

Not only does the Court have the discretion to set the amount of bail (lines 22-23), but also has the discretion to set the type of bond and conditions of that bond on a case-by-case basis. When determining the appropriate type of bond and bail amount, the Judge is also *required* to consider the criteria identified by Statute, as well as any statutorily mandated conditions of bond. Additionally, the Judge may set any additional conditions that are deemed appropriate.

Bond is forfeited only upon failure to appear in court. A definition of forfeiture would be helpful in this section, as well as a definition of exoneration, since many bonds ordered forfeited by commercial sureties are later exonerated on motions filed by those compensated sureties. Forfeiture is the order to pay the amount of money that was promised, either by the compensated

surety (secured) or the individual (unsecured) if the defendant failed to appear in court. Exoneration is a way for a surety to be relieved from liability to pay on a bond they have signed. Individuals posting bonds do not have the same recourses provided by statute to the commercial sureties regarding delay of forfeiture and exoneration from forfeiture. Nor are individuals entitled to a refund of forfeiture when the defendant is arrested by law enforcement within a year of the forfeiture.

It would be helpful for the people to know that when a compensated surety posts a defendant's bond, the money is not deposited "up front" with the court, but is also a promise by the surety to pay if the defendant fails to appear, just as the unsecured, or personal recognizance (PR), bond is a promise to appear or the amount of the PR bond will be forfeited, with the dollar amount of the bond assessed on the defendant's court case and collected when the defendant again appears on the case.

In Line 25: "...or pay a fee to get a bond through a commercial bail bondsman."

It would benefit the public to know that the fee is non-refundable. That could be accomplished by inserting "*non-refundable*" to read: "... **or pay a non-refundable fee to get a bond through a commercial bail bondsman.**"

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

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

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

Comments – Pretrial Services Programs:

In Line 29: “... qualify for release to a pretrial services program.”

Once again, this can be misleading and has been a misrepresentation presented by the proponents, by implying that a defendant either posts a bond or is handed over to a pretrial services program in a “get out of jail free” scheme. Pretrial Programs in the state of Colorado provide pretrial supervision as a condition of bond in appropriate cases, and they provide that supervision regardless of the type of bond, supervising both secured and unsecured bonds. It would be helpful to consistently point out that it is release to “supervision by” a pretrial services program instead of just “release to”.

The last sentence in this section does give the public the knowledge that, regardless of the crime or risk to the public, the proposal allows for release of a defendant on an unsecured bond, as long as there is no supervision by a pretrial services program.

One of the functions of Pretrial Services Programs is to screen, interview, investigate, verify, apply objective risk criteria, and make written recommendations to the judge regarding the pretrial release decision of a defendant. Statute 16-4-105 (1) C.R.S. states, “In determining the amount of bail and the type of bond to be furnished by the defendant, the judge fixing the same shall consider and be governed by the following criteria” This proposition:

- Will prevent the use of the screens, assessments, investigative information and statutorily required criteria in making recommendations to the Judge regarding pretrial release.
- Will prevent the Judge from using that information to determine the appropriate bail, bond type and conditions of bond for the defendant.

The second function of Pretrial Services Programs is to provide community-based supervision to monitor defendant behaviors prior to trial through various methods, such as periodic visits with the defendant, drug testing, electronic monitoring, and substance abuse treatment. These methods are currently identified in 16-4-105(d) (I-VIII). Another confusing subject of the proposal is that it adds item “IX - POSTING OF A CASH, PROPERTY, OR PROFESSIONAL SURETY BOND AS SET FORTH IN CRS 16.4.104, FOR PERSONS CHARGED WITH FIRST OFFENSE, NON-VIOLENT MISDEMEANORS WHEN APPROPRIATE.” The proposal does not define “when appropriate” and because this item is added to the “established supervision methods” which may be utilized by Pretrial Services Programs, it appears to delegate to a Pretrial Program the authority to change a bond set by the judge and require the posting of a secured bond if the Program feels it is “appropriate.” Current statutes require that the Judge set the bail amount, bond type and conditions of bond, not a Pretrial Services Program.

Failure to comply with the pretrial services conditions may result in a defendant being returned to jail.

ARGUMENTS FOR:

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

Comments – Arguments For: There are many unsubstantiated statements in the Argument For, but these are probably best addressed in a “rebuttal” through an Argument Against.

ARGUMENT AGAINST:

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

Comments – Argument Against:

As a rebuttal to the second sentence in the Argument For, the same financial incentive exists with the unsecured bonds since that bail amount is assessed the defendant if they FTA.

In Colorado, Pretrial Service Programs state-wide are very successful because they have Failure To Appear (FTA) rates (“skip” rates) averaging less than 5%. In the last 12 months alone, Larimer County had an average FTA rate of 1.79% for those defendants under Pretrial Services supervision, while those defendants without pretrial supervision had an FTA rate of 10.73%. It is useful to know that there is little duplication between the functions of the private compensated bail sector, which makes its profit-motivated decision based upon a defendant’s access to money, while Pretrial Service Programs screen, interview, investigate, verify, apply objective risk criteria, report, and provide information for informed bond decisions to be made by the Courts. Additionally, the Pretrial Services Programs monitor, supervise and provide written documentation of compliance with conditions of bond to the courts. Part of these functions provide the Judge with the statutorily required information to use for informed bond decisions and others advise the Judge of compliance with bond conditions that impact community safety.

Additionally, the cost to the taxpayers for the increase in the number of secured bonds can be exponential as those who cannot post the financial bond remain in jail and increase the need for secure jail beds at huge expense to the taxpayer. Additionally, the taxpayer shoulders the burden for the costs of social programs to support families whose breadwinner remains in jail, and the loss of employment for defendants who remain in custody, negatively impacts the tax base when those wages no longer flow through the community.

No defendant, wealthy or poor, should have to remain in jail or be forced to buy their way out of jail, particularly when the judge has determined that the appropriate bond should be non-financial, but that any concerns for community safety or return to court could have been addressed through supervision by a Pretrial Services Program. This proposition forces judges to add a financial condition of bond whenever they want pretrial supervision.

ESTIMATE OF FISCAL IMPACT:

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

COMMENTS – ESTIMATE OF FISCAL IMPACT:

The difference in costs to the Taxpayer can be significant and could reach far beyond the Estimate presented. In Larimer County, the cost per day for providing pretrial supervision is less than 2% of the cost per day to maintain a defendant in jail, which is twice the state reimbursement rate for local jails. County Taxpayers bear the full burden of building and maintaining county jails, yet defendants who cannot post bond and must remain in jail pending trial do not contribute to the cost of their detention.

In 2009 in Larimer County, 1,265 cases were tracked by the Pretrial Services Program. These cases had orders for secure bonds, with Pretrial Supervision, but the defendants were unable to post those bonds. The average length of stay from the date the bond was ordered until it was released at sentencing or dismissal was 64 days, for a total of 80,960 jail-bed-days.

The estimate may represent an extremely low figure and may present an unrealistic expectation of cost to the public. I believe that the estimate was reached by reviewing the July 1 2008-June 30, 2009 Annual Report to the State Judicial Department submitted by Pretrial Service Programs in compliance with SB 00-192 and Section 16-4-105 (3) (e), C.R.S. However, that report asks only for the number and bond type of RECOMMENDATIONS made and not for the number and bond type of those ORDERED to Pretrial Supervision. The estimate of fiscal impact was revised, I believe, to consider a portion of the 8,169 defendants listed in the NONE column of that report, which accounts for those defendants who came in on arrests/warrants with Bond previously set by the Court and/or those for whom bond was modified by the Court; therefore Pretrial did not make a recommendation. In Larimer County approximately 16% of cases in the NONE column were ORDERED to pretrial supervision with an unsecured bond, but were not considered in the estimate of fiscal impact.

The fiscal impact estimate considered that fewer than 50% of the 4,662 defendants ordered to Pretrial Supervision with a PR bond in state fiscal year 2009 would be required to post a secured bond to be released to Pretrial Supervision. Not only is the estimate of the number of defendants low, but the estimate of fiscal impact also used the state reimbursement figure of \$50.44, which is less than the cost per day for many jails and is less than half of the cost per day in Larimer County. Additionally, with most jails at or over capacity, any requirement for additional jail beds means that the County Taxpayer will bear the additional cost to build jail beds, which currently exceeds \$100,000 per jail bed, as well as the additional operational costs to staff and operate those additional beds.

I agree with the use of 30% who cannot secure bond and must remain in jail until disposition of their case. However, with this figure based upon the low estimate of numbers impacted and the use of an estimated 45 days from arrest until disposition/sentencing/bond release, it would also be lower than the impact estimated by individual Counties. In Larimer County, Pretrial Services eligible defendants who could not post their financial bail remained in custody an average of 63 days, at a cost to the County of \$6,552.00 versus \$97.65 for each defendant if they had been released to Pretrial Services supervision.

It is also unclear if a request was made to the Statewide Association of County Commissioners for fiscal information regarding the impact of the proposal on certain counties as required in 29-1-304.9 C.R.S. (HB 09-1200).

It is unrealistic to anticipate/project that requiring secured bonds in more situations will decrease the Court orders for pretrial supervision and the monitoring of other conditions of bond, which are ordered to address concerns of community safety.

Additionally, supervision by a Pretrial Services Program provides successful return to court over 98% of the time. In Larimer County, the Failure To Appear (FTA) rate in the past 12 months for those under supervision by the Pretrial Services Program averaged 1.7%, while the FTA rate for those not under supervision by a Pretrial Services Program averaged 10.7% of court appearances for 3,708 FTAs. The Fiscal Impact of an FTA is broad, with staff time required by Court Clerks in the entry of warrants, notice of forfeitures, court scheduling of additional hearings, law enforcement notification and law enforcement fugitive apprehension, arrest and additional jailing must be considered. If fewer defendants have supervision by a pretrial services program, additional FTA's will result.

Last Draft as Mailed to Interested Parties

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 not bailable 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.

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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.

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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.

INITIATIVE 92
CRITERIA FOR RELEASE TO PRETRIAL SERVICES PROGRAMS
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Initiative #92
Criteria for Release to Pretrial Services Programs

1 **Ballot Title:** An amendment to the Colorado Revised Statutes requiring that only
2 defendants arrested for a first offense, non violent misdemeanor may be recommended
3 for release or actually released to a pretrial services program's supervision in lieu of a
4 cash, property, or professional surety bond.

5 **Text of Proposal:**

6 Be it Enacted by the People of the State of Colorado:

7 The introductory portion of section 16-4-105 and section 16-4-105 (3) (d) (VII) and (3)
8 (d) (VIII), Colorado Revised Statutes, are amended, and the said 16-4-105 (3) (d) is
9 further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

10 (d) Any pretrial services program may also include different methods and levels of
11 community-based supervision as a condition of pretrial release. The program may use
12 established supervision methods for defendants who are released prior to trial in order
13 to decrease unnecessary pretrial incarceration. IN MAKING RECOMMENDATIONS FOR
14 APPROPRIATE CONDITIONS ON RELEASE FOR A PERSON IN CUSTODY, ONLY DEFENDANTS
15 WHO ARE ARRESTED FOR THEIR FIRST OFFENSE, NON VIOLENT MISDEMEANOR MAY BE
16 RECOMMENDED FOR RELEASE TO A PRETRIAL SERVICES PROGRAM'S SUPERVISION IN LIEU
17 OF A CASH, PROPERTY, OR PROFESSIONAL SURETY BOND, AS SET FORTH IN
18 C.R.S. 16-4-104. FURTHERMORE, ONLY DEFENDANTS ARRESTED FOR A FIRST OFFENSE,
19 NON VIOLENT MISDEMEANOR MAY BE RELEASED TO A PRETRIAL SERVICES PROGRAM'S
20 SUPERVISION IN LIEU OF A CASH, PROPERTY, OR PROFESSIONAL SURETY BOND, AS SET
21 FORTH IN C.R.S. 16-4-104. The program may include any of the following conditions
22 for pretrial release or any combination thereof:

23 (I) Periodic telephone contact with the defendant;

24 (II) Periodic office visits by the defendant to the pretrial services program;

25 (III) Periodic home visits to the defendant's home;

26 (IV) Periodic drug testing of the defendant;

27 (V) Mental health or substance abuse treatment for the defendant, including
28 residential treatment;

29 (VI) Domestic violence counseling for the defendant;

1 (VII) Electronic or global position monitoring of the defendant; and

2 (VIII) Pretrial work release of the defendant; and

3 (IX) POSTING OF A CASH, PROPERTY, OR PROFESSIONAL SURETY BOND AS SET
4 FORTH IN C.R.S. 16-4-104, FOR PERSONS CHARGED WITH FIRST OFFENSE, NON VIOLENT
5 MISDEMEANORS WHEN APPROPRIATE.