



BAIL, BAIL BONDING AGENTS, AND PRETRIAL SERVICES PROGRAMS

by Hillary Smith

After a person is arrested, a court may release him or her from custody before the trial by setting bail and bond conditions. Bail is an amount of money that must be paid if the defendant does not appear for trial. A bond is an agreement between a defendant and the court under which the defendant agrees to comply with all of the conditions of his or her release, including the condition that bail will be forfeited if the defendant does not appear for trial. A defendant may hire a private bail bonding agent to help secure bail, and a court may also require a defendant to be supervised by a pretrial services program run by the local government while on release.

This issue brief provides an overview of state law concerning bail, bail bonding agents, and pretrial services programs. A summary of recent legislation and ballot measures concerning these issues is included.

Bail and Bond Requirements

The right to bail and exceptions. Provisions of the U.S. and Colorado Constitutions guarantee the right to bail that is not excessive. However, the right to bail is not absolute. Bail may be denied if the defendant has been charged with a capital offense (e.g., murder, kidnapping, or treason) and the court finds that there is evident proof or a presumption that the defendant committed the crime. Bail may also be denied if the defendant has been charged with or previously convicted of certain serious offenses and

the court finds that the public would be placed in significant peril if the defendant were released.

Criteria for setting bail. In setting bail for a particular defendant, the court is required to ensure that the amount of bail is not oppressive. In addition, if a defendant is charged with an offense punishable by a fine only, the amount of bail must not exceed the amount of the maximum penalty. In making decisions regarding bail, the court considers factors such as the defendant's employment status and history, financial condition, family relationships, character and reputation, and prior criminal record. The court also considers the nature of the offense with which the defendant is charged, the apparent probability of conviction, and the likely sentence.

Bond conditions. A condition of every bond is the requirement that the defendant appear in court for trial. Failure to appear in court is the only infraction for which a defendant must forfeit bail. Another condition of every bond forbids the defendant from committing any felony during his or her release. Finally, specific bond conditions exist for defendants accused of certain offenses, such as domestic violence. In addition to the bond conditions mandated by law, the court has the discretion to impose other conditions, such as a requirement that a defendant be supervised by a pretrial services program.

Types of bonds. A bond can be either unsecured or secured. With an unsecured bond, the defendant is

released on his or her personal recognizance, but is required to pay the bail amount if her or she does not appear for trial. With a secured bond, the defendant pays or promises to pay (through a bail bonding agent) an amount of money or interest in property before he or she may be released from custody. Three categories of secured bonds exist:

- *cash*: the defendant deposits cash in the full amount of the bail with the court clerk;
- *property*: the defendant provides the court clerk with a real property trust deed with an equity of 1.5 times the amount of the bail; and
- *surety*: the defendant hires a bail bonding agent to guarantee his or her appearance. In return, the defendant pays the agent a premium of up to 15 percent of the bail amount. If the defendant fails to appear for trial, the bail bonding agent is liable to the court for the full amount of bail.

Pretrial Services Programs

State law permits local governments to set up pretrial services programs, whose purposes and practices may vary across the state. All pretrial services programs must assess defendants and provide information and recommendations to the court concerning the defendant's risk to public safety and the likelihood that he or she will appear for trial. The court may use this information in setting the defendant's amount of bail and type of bond. Pretrial services programs are also permitted to provide community-based supervision to monitor defendants prior to trial if such supervision is a condition of the defendant's bond. Various methods of supervision may be ordered, including periodic visits with the defendant, drug testing, and substance abuse treatment. If a pretrial services program determines that a defendant has failed to comply with bond conditions, the defendant may be returned to jail. Defendants who are supervised by a pretrial services program may be released on either a secured or unsecured bond.

Pretrial services programs in Colorado. There are 13 pretrial services programs in Colorado, located in Adams, Alamosa, Arapahoe, Boulder, Denver,

Douglas, El Paso, Jefferson, Larimer, Mesa, Montezuma, Pueblo, and Weld Counties. In total, the population of the counties served by these programs represents 85 percent of Colorado's population.

Recent Legislation and Ballot Measures

House Bill 12-1266. In 2012, the General Assembly passed HB 12-1266, which amends the manner in which bail bonding agents are regulated by the Division of Insurance within the Colorado Department of Regulatory Agencies. The bill changes the way certain bail bonding agents are licensed, and allows for other bail bonding agents to be registered, rather than licensed.

Senate Bill 11-186. In 2011, the General Assembly considered but ultimately did not pass SB 11-186, which would have permitted chief judges in judicial districts with pretrial services programs to create and administer alternative bond programs. In those districts, an alternative bond program would have joined unsecured and secured bonds as options available to judges when authorizing the pretrial release of a defendant. Defendants released as part of an alternative bond program would have been required to post up to 15 percent of the bail amount with the court. The court would have then decided how to secure the full amount of the bail.

House Bill 11-1135. In 2011, the General Assembly postponed indefinitely HB 11-1135, which would have transferred the regulation of bail bonding agents to a newly created State Bail Bonding Agent Board within the Division of Registrations at the Department of Regulatory Agencies. In addition, the bill would have increased education requirements for initial licensure and license renewals.

Proposition 102. In 2010, voters considered Proposition 102, a statewide citizen-initiated ballot measure that would have prohibited the release of a defendant on an unsecured bond to supervision by a pretrial services program unless the defendant was arrested for his or her first offense that was also a nonviolent misdemeanor. The measure did not pass.