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Colorado Ballot Initiative

Colorado Secretary of State

Amend Statute Relating To Type Of Bond – Criminal Defendant Release Procedures

(Statutory changes are indicated in italics and bold, and using strikethrough)

16-4-105 - Selection by judge of the amount of bail and type of bond - criteria.

- (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:
- (a) The amount of bail shall not be oppressive;
 - (b) When a person is charged with an offense punishable by fine only, the amount of bail shall not exceed the amount of the maximum penalty;
 - (c) The defendant's employment status and history and his financial condition;
 - (d) The nature and extent of his family relationships;
 - (e) His past and present residences;
 - (f) His character and reputation;
 - (g) Identity of persons who agree to assist him in attending court at the proper time;
 - (h) The nature of the offense presently charged and the apparent probability of conviction and the likely sentence;
 - (i) The defendant's prior criminal record, if any, and, if he previously has been released pending trial, whether he appeared as required;
 - (j) Any facts indicating the possibility of violations of law if the defendant is released without restrictions;
 - (k) Any facts indicating a likelihood that there will be an intimidation or harassment of possible witnesses by the defendant;
 - (k.5) The fact that the defendant is accused of unlawfully using or distributing controlled substances on the grounds of any public or private elementary, middle, or secondary school, or within one thousand feet of the perimeter of any such school grounds on any street, alley, parkway, sidewalk, public park, playground, or other area of premises which is accessible to the public, or within any private dwelling which is accessible to the public for the purpose of the sale, distribution, use, or exchange of controlled substances in violation of article 18 of title 18, C.R.S., or in any school bus engaged in the transportation of persons who are students at any public or private elementary, middle, or secondary school;
 - (k.7) The fact that the defendant is accused of soliciting, inducing, encouraging, intimidating, employing, or procuring a child to act as his agent to assist in the unlawful distribution, manufacture, dispensing, sale, or possession for the purposes of sale of any controlled substance;
 - (l) Any other facts tending to indicate that the defendant has strong ties to the community and is not likely to flee the jurisdiction;
 - (m) Unless the district attorney consents, no person shall be released on personal recognizance if he is presently at liberty on another bond of any kind in another criminal action involving a felony or a class 1 misdemeanor;
 - (n) Unless the district attorney consents, no person shall be released on personal recognizance if he has a record of conviction of a class 1 misdemeanor within two years, or a felony within five years, prior to the release hearing;
 - (n.5) Unless the district attorney consents, no person who is eighteen years of age or older or is being charged as an adult pursuant to section 19-2-517, C.R.S., or transferred to the district court pursuant to section 19-2-518, C.R.S., shall be released on personal recognizance if the person's criminal record indicates that he or she failed to appear on bond in any case involving a felony or class 1 misdemeanor charge in the preceding five years;
 - (o) No person shall be released on personal recognizance until and unless the judge ordering the release has before him reliable information concerning the accused, prepared or verified by a

person designated by the court, or substantiated by sworn testimony at a hearing before the judge, from which an intelligent decision based on the criteria set forth in this section can be made. Such information shall be submitted either orally or in writing without unnecessary delay.

- (p) No person shall be released on personal recognizance if, at the time of such application, the person is presently on release under surety bond for felony or class 1 misdemeanor charges unless the surety thereon is notified and afforded an opportunity to surrender the person into custody on such terms as the judge deems just under the provisions of section 16-4-108;
 - (p.5) Any defendant who fails to appear while free on bond in conjunction with a class 1 misdemeanor or a felony and who is subsequently arrested shall not be eligible for a personal recognizance bond for that case in which such defendant failed to appear; except that, if the defendant can provide satisfactory evidence to the court that the failure to appear was due to circumstances or events beyond the control of the defendant, the court shall have the discretion to grant a personal recognizance bond;
 - (q) If a pretrial services program as described in subsection (3) of this section exists in the judicial district in which the defendant is being held, the judge fixing the amount of bail and the type of bond to be furnished by the defendant may utilize the services provided by such program in entering an order concerning such defendant.
- (2) If a defendant has been required by the judge to furnish a secured bond and he is unable within two days to furnish security, if he believes that, upon the presentation of evidence not heard or considered by the judge, he would be entitled to release on personal recognizance, such defendant may file a written motion for reconsideration in which he shall set forth the matters not theretofore considered by the judge who entered the order for bond in the first instance. The judge may summarily deny the motion or promptly conduct a hearing thereon.
- (3) (a) The chief judge of any judicial district may order any persons who are applying for pretrial release to be evaluated by a pretrial services program established pursuant to this subsection (3) which shall make a recommendation regarding whether there should be a pretrial release of any particular defendant. Such chief judge may make such order in any or all of the counties of such chief judge's district.
- (b) Any county or city and county may establish a pretrial services program which may be utilized by the district court of such county or city and county. Any pretrial services program shall be established pursuant to a plan formulated by a community advisory board created for such purpose and appointed by the chief judge of the judicial district. Membership upon such community advisory board shall include, but shall not be limited to, a representative of a local law enforcement agency, a representative of the district attorney, a representative of the public defender, and a representative of the citizens at large. The plan formulated by such community advisory board shall be approved by the chief judge of the judicial district prior to the establishment and utilization of the pretrial services program. The requirement contained in this paragraph (b) that any pretrial services program be established pursuant to a plan formulated by a community advisory board shall not apply to any pretrial services program which exists prior to May 31, 1991.
- (c) Any pretrial services program approved pursuant to paragraph (b) of this subsection (3) shall meet the following criteria:
- (I) Such program shall establish a procedure for the screening of persons who are detained due to an arrest for the alleged commission of a crime so that such information may be provided to the judge who is setting the amount of bail and type of bond. The program shall provide such information as will provide the court with the ability to make a more appropriate initial bond decision which is based upon facts relating to the defendant's risk of danger to the community and the defendant's risk of failure to appear for court.
 - (II) Such program shall make all reasonable attempts to provide the court with such information delineated in subsection (1) of this section as is appropriate to each defendant.

- (d) Any pretrial services program may also include different methods and levels of community-based supervision as a condition of pretrial release. The program may use established supervision methods for defendants who are released prior to trial in order to decrease unnecessary pretrial incarceration. **Information gathered by pretrial services agencies shall only be used to establish appropriate conditions on release for a person in custody, and only defendants who are arrested for their first offense, non violent felony or misdemeanor may be released to a pretrial services agency's supervision in lieu of a secured bond.** The program may include any of the following conditions for pretrial release or any combination thereof:
- (I) Periodic telephone contact with the defendant;
 - (II) Periodic office visits by the defendant to the pretrial services program;
 - (III) Periodic home visits to the defendant's home;
 - (IV) Periodic drug testing of the defendant;
 - (V) Mental health or substance abuse treatment for the defendant, including residential treatment;
 - (VI) Domestic violence counseling for the defendant;
 - (VII) Electronic monitoring of the defendant; and
 - (VIII) Pretrial work release of the defendant.; and
 - (IX) Posting of a secured bond for persons charged with crimes other than first offense, non violent felonies or misdemeanors.**
- (e) Commencing November 1, 2000, each pretrial services program established pursuant to this subsection (3) shall provide an annual report to the state judicial department no later than November 1 of each year, regardless of whether the program existed prior to May 31, 1991. The judicial department shall present an annual combined report to the house and senate judiciary committees of the general assembly. The report shall include but is not limited to the following information:
- (I) The number of interviews conducted with defendants;
 - (II) The number and nature of recommendations made;
 - (III) The number of defendants under pretrial release supervision who failed to appear; and
 - (IV) Any additional information the state judicial department may request.
- (f) Any pretrial services program established pursuant to this subsection (3) shall not be eligible for further program funding if the program has failed to provide the reports required in paragraph (e) of this subsection (3).

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