ARTICLE 4
RELEASE FROM CUSTODY PENDING FINAL ADJUDICATION

Editor's note: This article was repealed and reenacted in 1972. For historical information concerning the repeal and reenactment, see the editor's note before the article 1 heading.

Section

PART 1 RELEASE ON BAIL

PART 2 BAIL AFTER CONVICTION

PART 3 UNIFORM RENDITION OF ACCUSED PERSONS ACT

16-4-101. Bailable offenses.

(1) All persons shall be bailable by sufficient sureties except:

(a) For capital offenses when proof is evident or presumption is great; or

(b) When, after a hearing held within ninety-six hours of arrest and upon reasonable notice, the court finds that the proof is evident or the presumption is great as to the crime alleged to have been committed and finds that the public would be placed in significant peril if the accused were released on bail and such person is accused in any of the following cases:

(I) A crime of violence alleged to have been committed while on probation or parole resulting from the conviction of a crime of violence;

(II) A crime of violence alleged to have been committed while on bail pending the disposition of a previous crime of violence charge for which probable cause has been found;

(III) A crime of violence alleged to have been committed after two previous felony convictions, or one such previous felony conviction if such conviction was for a crime of violence, upon charges separately brought and tried under the laws of this state or under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States which, if committed in this state, would be a felony;

(IV) A crime of possession of a weapon by a previous offender alleged to have been committed in violation of section 18-12-108 (2) (b), (2) (c), (4) (b), (4) (c), or (5), C.R.S.; or

(c) When a person has been convicted of a crime of violence or a crime of possession of a weapon by a previous offender, as described in section 18-12-108 (2) (b), (2) (c), (4) (b), (4) (c), or (5), C.R.S., at the trial court level and such person is appealing such conviction or awaiting sentencing for such conviction and the court finds that the public would be placed in significant peril if the convicted person were released on bail.

(2) For purposes of this section, "crime of violence" shall have the same meaning as that set forth in section 18-1.3-406 (2), C.R.S.

(3) In any capital case, the defendant may make a written motion for admission to bail upon the ground that the proof is not evident or that presumption is not great, and the court shall promptly conduct a hearing upon such motion. At such hearing, the burden shall be upon the people to establish that the proof is evident or that the presumption is great. The court may combine in a single hearing the questions as to whether the proof is evident or the presumption great with the determination of the existence of probable cause to believe that the defendant committed the crime charged.

(4) Except in the case of a capital offense, if a person is denied bail under this section, the trial of the person shall be commenced not more than ninety days after the date on which bail is denied. If the trial is not commenced within ninety days and the delay is not attributable to the defense, the court shall immediately schedule a bail hearing and shall set the amount of the bail for the person.

(5) When a person is arrested for a crime of violence, as defined in section 16-1-104 (8.5), or a criminal offense alleging the use or possession of a deadly weapon or the causing of bodily injury to another

person, or a criminal offense alleging the possession of a weapon by a previous offender, as described in section 18-12-108 (2) (b), (2) (c), (4) (b), (4) (c), or (5), C.R.S., and such person is on parole, the law enforcement agency making the arrest shall notify the department of corrections within twenty-four hours. The person so arrested shall not be eligible for bail to be set until at least seventy-two hours from the time of his or her arrest has passed.

Source: L. 72: R&RE, p. 203, § 1. **C.R.S. 1963:** § 39-4-101. **L. 79:** Entire section amended, p. 662, § 1, effective July 1. **L. 87:** Entire section R&RE, p. 613, § 1, effective July 1; (5) added, p. 657, § 16, effective July 1. **L. 2000:** (1)(b)(III), (1)(c), and (5) amended and (1)(b)(IV) added, p. 634, § 5, effective July 1. **L. 2002:** (2) amended, p. 1489, § 129, effective October 1.

Cross references: (1) For right to bail and exceptions thereto, see § 19 of article II of the state constitution; for prohibition against excessive bail, see § 20 of article II of the state constitution.

(2) For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "The Use of 'No Bond' Holds in Colorado", see 32 Colo. Law. 81 (November 2003).

Annotator's note. Since § 16-4-101 is similar to repealed § 39-2-3, C.R.S. 1963, relevant cases construing that provision have been included in the annotations to this section.

Purpose of bail is to insure the defendant's presence at the time of trial and not to punish a defendant before he has been convicted. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

Proviso refers to proof of guilt. The requirement in the constitution that capital offenses are nonbailable when "the proof is evident or the presumption great" simply goes to the proof of guilt, not to the kind of proof needed for the imposition of the death penalty. Corbett v. Patterson, 272 F. Supp. 602 (D. Colo. 1967).

Offense does not cease to be capital where death penalty may not be imposed. Although by statute the death penalty cannot be imposed on the basis of only circumstantial evidence, the petitioner does not cease to be charged with a capital offense and thus become entitled to bail as a matter of right where the prosecution probably did not have the direct evidence necessary to seek the death penalty. The offense with which he was charged was still a capital one, even if it should later develop that the type of evidence adduced did not support a verdict imposing the death penalty. Corbett v. Patterson, 272 F. Supp. 602 (D. Colo. 1967).

And denial of bail unaffected by constitutionality of death penalty. The United States supreme court decision prohibiting imposition of death penalty in the circumstances then before it did not preclude denial of bail pursuant to state constitutional provision that bail may be denied where capital offense is charged when the proof is evident, or the presumption great, that defendant has committed the charged offense. People ex rel. Dunbar v. District Court, 179 Colo. 304, 500 P.2d 358 (1972).

Standard which the constitution requires before bail may be denied is greater than probable cause though less than that required for a conviction. Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975).

Guilt or innocence of the accused is not the issue in a bail hearing. Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975).

Burden on prosecution to show nonbailable case. If bail is to be denied, it is incumbent upon the prosecution to come forward and show that the proof is evident or the presumption great that the crime set forth was committed by the defendant, but if evidence is not presented by the prosecution, it is incumbent upon the court, looking to the guidelines laid down by statute, to set reasonable bail in compliance with the Colorado constitution and the eighth amendment of the constitution of the United States. People ex rel. Dunbar v. District Court, 179 Colo. 304, 500 P.2d 358 (1972).

The burden is upon the prosecution to show that the exception to the right to bail is applicable, and only with that showing can the conditional freedom secured by bail properly be denied. Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975).

Denial of bail not foreclosed by fact that defendant was minor. The fact that defendant was 16 years of age, a minor, who could not be subjected to the death penalty, would not have foreclosed the denial of bail. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

Mere filing of an information or the production of evidence which would establish probable cause that the crimes charged were committed will not meet the Colorado constitutional standard for denying bail in capital cases. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

Trial judge exceeded jurisdiction but did not lose right to revoke or modify bail. The trial judge exceeded his jurisdiction by equating probable cause to the Colorado constitutional standard for denying bail in capital cases and by imposing an impermissible condition on the defendant at the time bail was granted. However, the right of the court to revoke or modify bail which has been previously granted after notice is given to the defendant was not negated. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

Only criminal defendants vested with legal rights in bail. Statutory provisions concerning bail do not purport to vest any persons other than criminal defendants with any legal rights in the determination of the terms, amount, or conditions of bail. Wimberly v. Ettenberg, 194 Colo. 163, 570 P.2d 535 (1977).

Child does not have absolute constitutional or statutory right to bail pending adjudication of the charges filed against him in juvenile court. L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

When juvenile detainable without bail. A trial court may detain a juvenile without bail only after giving due weight to the presumption that a juvenile should be released pending a dispositional hearing except in narrowly defined circumstances where the state establishes that detention is necessary to protect the child from imminent harm or to protect others in the community from serious bodily harm which the child is likely to inflict. L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

Applied in Stephenson v. District Court, 629 P.2d 1078 (Colo. 1981); People v. Turman, 659 P.2d 1368 (Colo. 1983); People v. Walker, 665 P.2d 154 (Colo. App. 1983), aff'd sub nom. Yording v. Walker, 683 P.2d 788 (Colo. 1984).

16-4-102. Right to bail - before conviction.

Any person who is in custody and for whom no bail has been set pursuant to the applicable rule of criminal procedure, and who is not subject to the provisions of section 16-4-101 (5), may advise any judge of a court of record in the county where he is being held of that fact with a request that bail be set. Upon receiving the request, the judge shall cause the district attorney to be notified immediately of the arrested person's request, and said district attorney shall have the right to attend and advise the court of matters pertinent to the amount of bail to be set. The judge shall also order the appropriate law enforcement agency having custody of the prisoner to bring him before the court forthwith, and the judge shall set bail if the offense for which the person was arrested is bailable. It shall not be a prerequisite to bail that a criminal charge of any kind has been filed.

Source: L. 72: R&RE, p. 203, § 1. **C.R.S. 1963:** § 39-4-102. **L. 87:** Entire section amended, p. 657, § 17, effective July 1.

ANNOTATION

Law reviews. For article, "Criminal Procedure in Colorado -- A Summary and Recommendations for Improvement", see 22 Rocky Mt. L. Rev. 221 (1950).

Annotator's note. Since § 16-4-102 is similar to repealed § 39-2-1, CRS 53, and laws antecedent to CSA, C. 48, § 426, relevant cases construing those provisions have been included in the annotations to this section.

The power to grant bail derives not from the constitution, but from the common law. People v. Sanders, 185 Colo. 153, 522 P.2d 735 (1974).

The manifest policy of this section is to encourage the giving of bail in proper cases, rather than to hold in custody at the state's expense persons accused of bailable offenses. The court should so administer cases arising under this statute as to give effect to this manifest policy. Allison v. People, 132 Colo. 156, 286 P.2d 1102 (1955).

The power to fix bail cannot be delegated. In the absence of a statute providing otherwise, the court or judicial officer vested with the power to fix bail cannot delegate such power to another. But where such power has been exercised by the proper court or officer, the act of taking and approving the bail bond is a ministerial act which may be delegated without statutory authority. Bottom v. People, 63 Colo. 114, 164 P. 697 (1917).

Hearsay evidence is admissible in bail hearings. Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975).

But denial of bail may not be predicated upon hearsay alone, but such evidence may be admitted in corroboration. Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975).

Child does not have absolute constitutional or statutory right to bail pending adjudication of the charges filed against him in juvenile court. L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

When child detainable without bail. A trial court may detain a juvenile without bail only after giving due weight to the presumption that a juvenile should be released pending a dispositional hearing except in narrowly defined circumstances where the state establishes that detention is necessary to protect the child from imminent harm or to protect others in the community from serious bodily harm which the child is likely to inflict. L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

16-4-103. Fixing of bail and conditions of bail bond.

(1) (a) At the first appearance of a person in custody before a judge of a court of record, the amount of bail and type of bond shall be fixed by the judge, unless the person is subject to the provisions of section 16-4-101 (5), or an indictment, information, or complaint has theretofore been filed and the amount of bail and type of bond has been fixed upon the return of the indictment, or filing of the information or complaint, in which event the propriety of the bond shall be subject to reappraisal. The amount of bail and type of bond shall be sufficient to assure compliance with the conditions set forth in the bail bond.

(b) If a person is arrested under section 42-2-138 (1) (d) (I), C.R.S., for driving while such person's driver's license or privilege to drive, either as a resident or nonresident, is restrained solely or partially because of a conviction of a driving offense pursuant to section 42-4-1301 (1) or (2) (a), C.R.S., then the bail for such person shall be ten thousand dollars or such amount as is set at a bail hearing.

(b.5) If a person is arrested for vehicular eluding under section 18-9-116.5, C.R.S., and driving under the influence under section 42-4-1301, C.R.S., arising out of the same incident, the bail for such person shall be fifty thousand dollars or such amount as is set by the court after consideration of all relevant factors.

(c) Because of the danger posed to the person and to others, a person who is arrested for an offense under section 42-4-1301 (1) or (2) (a), C.R.S., may not attend a bail hearing until such person is no longer intoxicated or under the influence of drugs. Such person shall be held in custody until such person may safely attend such hearing.

(d) (I) If a person is arrested for distribution of a schedule I or schedule II controlled substance pursuant to section 18-18-405, C.R.S., then the court shall set bail for such person at fifty thousand dollars; except that, upon the motion of the district attorney or defendant and a showing of good cause, the court may set bail at an amount other than the specified amount.

(II) The bail amount specified in subparagraph (I) of this paragraph (d) shall be adjusted for inflation on January 1, 2018, and on January 1 every ten years thereafter. The adjustment shall be based on the cumulative annual adjustment for inflation for each year since July 1, 2008. The adjustments made pursuant to this subparagraph (II) shall be rounded upward or downward to the nearest ten-dollar increment.

(III) As used in this paragraph (d), "inflation" means the annual percentage change of inflation indicated in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Boulder, all items, all urban consumers, or its successor index.

(IV) The state court administrator shall certify the adjusted bail amount within fourteen days after the appropriate information is available. The adjusted bail amount shall be applicable to all pending cases one month after its certification.

(e) (I) If a person is arrested for driving under the influence or driving while ability impaired, pursuant to section 42-4-1301, C.R.S., and the person has one or more previous convictions for an offense in section 42-4-1301, C.R.S., or one or more convictions in any other jurisdiction that would constitute a violation of section 42-4-1301, C.R.S., as a condition of any bail bond, the court shall order that the defendant abstain from the use of alcohol or the illegal use of drugs, and such abstinence shall be monitored.

(II) A defendant seeking relief from any of the conditions imposed pursuant to subparagraph (I) of this paragraph (e) shall file a motion with the court, and the court shall conduct a hearing upon the motion. The court shall consider whether the condition from which the defendant is seeking relief is in the interest of justice and whether public safety would be endangered if the condition were not enforced. When determining whether to grant relief pursuant to this subparagraph (II), the court shall consider whether the defendant has voluntarily enrolled in and is participating in an appropriate substance abuse treatment program.

(2) (a) A condition of every bail bond, and the only condition for a breach of which a surety or security on the bail bond may be subjected to forfeiture, is that the released person appear to answer the charge against such person at a place and upon a date certain and at any place or upon any date to which the proceeding is transferred or continued.

(b) For a defendant who has been arrested for a felony offense, a condition of bail bond shall be that the court shall require the defendant to execute or subscribe a written prior waiver of extradition stating that the defendant consents to extradition to this state and waives all formal procedures incidental to extradition proceedings in the event that he or she is arrested in another state while at liberty on such bail bond and acknowledging that he or she shall not be admitted to bail in any other state pending extradition to this state.

(c) Further conditions of every bail bond shall be that the released person not commit any felony while at liberty on such bail bond and that the court in which the action is pending have the power to revoke the release of the defendant, to increase the bail bond, or to change any bail bond condition if it is shown that a competent court has found probable cause to believe that the defendant has committed a felony while released pending adjudication of a prior felony charge.

(d) A further condition of every bail bond in cases of domestic violence as defined in section 18-6-800.3 (1), C.R.S., shall be that the released person acknowledge the protection order as provided in section 18-1-1001 (5), C.R.S.

(e) A further condition of every bail bond in a case of an offense under section 42-2-138 (1) (d) (I), C.R.S., of driving while such person's driver's license or privilege to drive, either as a resident or nonresident, is restrained solely or partially because of a conviction of a driving offense pursuant to section 42-4-1301 (1) or (2) (a), C.R.S., shall be that such person not drive any motor vehicle during the period of such driving restraint.

(f) In addition to the conditions specified in this subsection (2), the judge may impose such additional conditions upon the conduct of the defendant as will, in the judge's opinion, render it more likely that the defendant will fulfill the other bail bond conditions. These additional conditions may include submission of the defendant to the supervision of some qualified person or organization.

(3) In any instance of bond forfeiture or judgment ordered by the court where bond is made by persons other than a compensated surety, as defined in section 16-4-112 (2) (c), or the defendant, the judge shall issue notice of declared forfeiture or judgment and afford an opportunity for hearing under section 16-4-110 to all persons pledging security for the defendant's appearance, to show cause, if any, why their security should not be declared forfeit and due the court. No judicial order or disposition of security pledged by third parties shall affect an order of forfeiture entered against a defendant except as may be expressly provided by the court.

Source: L. 72: R&RE, p. 204, § 1. **C.R.S. 1963:** § 39-4-103. **L. 79:** (2) amended, p. 662, § 2, effective July 1. **L. 81:** (3) added, p. 677, § 5, effective May 13. **L. 87:** (1) amended, p. 658, § 18, effective July

1. **L. 94:** (2) amended, p. 2035, § 14, effective July 1. **L. 97:** (2) amended, p. 1553, § 5, effective July 1. **L. 98:** (1) and (2) amended, p. 1241, § 8, effective July 1. **L. 99:** (3) amended, p. 137, § 7, effective July 1. **L. 2003:** (2) amended, p. 1013, § 20, effective July 1. **L. 2005:** (2) amended, p. 423, § 1, effective April 29. **L. 2006:** (2) amended, p. 340, § 2, effective July 1. **L. 2008:** (1)(b.5) added, p. 841, § 1, effective May 14; (1)(d) added, p. 924, § 4, effective July 1. **L. 2011:** (1)(e) added, (HB 11-1189), ch. 99, p. 290, § 1, effective April 8.

Cross references: For the legislative declaration contained in the 1998 act amending subsections (1) and (2), see section 1 of chapter 295, Session Laws of Colorado 1998. For the legislative declaration contained in the 2008 act enacting subsection (1)(d), see section 1 of chapter 248, Session Laws of Colorado 2008.

ANNOTATION

Law reviews. For article, "One Year Review of Criminal Law and Procedure", see 39 Dicta 81 (1962).

Annotator's note. Since § 16-4-103 is similar to repealed § 39-2-17, C.R.S. 1963, and laws antecedent to CSA, C. 48, § 443, relevant cases construing those provisions have been included in the annotations to this section.

The sole purpose and function of a bail bond is to produce the defendant in court then and there to answer unto a certain information herein pending against him. Herbertson v. People, 160 Colo. 139, 415 P.2d 53 (1966).

Conditions not specified in this section are not binding upon the surety. The condition that the principal "abide the order of the court" is of this character. Tanquary v. People, 25 Colo. App. 531, 139 P. 1118 (1914).

Proper imposition of conditions. The imposition of conditions relating to the defendant's right to remain at liberty on bail that comply with the constitution is in keeping with the recommendations of the standards for criminal justice. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

However, the trial judge imposed an improper and unconstitutional condition where the bail order included the following condition: "If probable cause shall be shown to this court that any of the above offenses shall have been committed by either defendant, bond for that particular defendant shall be immediately terminated." However, the right of the court to revoke or modify bail which has been previously granted after notice is given to the defendant was not negated. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

The trial judge imposed an improper and unconstitutional condition where bail bond included condition that defendant arrested on domestic violence charges and alcohol-related misdemeanors and his agents could have no contact with victim. Although the condition was reasonably related to the statutory criterion that the court protect possible witnesses and victims from intimidation or harassment by the defendant, it also interfered with defendant's right to have his counsel effectively represent him at trial by investigating the facts surrounding the alleged event and preparing for trial. Defendant does not, however, have the right to personally contact the victim, her family, or witnesses. Martell v. County Court of Summit County, 854 P.2d 1327 (Colo. App. 1992).

The trial judge erred in ordering defendant arrested on domestic violence charges and alcohol-related misdemeanors to attend counseling for abusive men as a condition of bond since such counseling may encourage or even require participants to admit their abusive behavior. Such counseling before conviction implicates defendant's fifth amendment privilege against self-incrimination and the presumption of innocence. Martell v. County Court of Summit County, 854 P.2d 1327 (Colo. App. 1992).

Statute provides accelerated docket for defendants held in custody. The plain intent of the statute is to provide for an accelerated docket for those defendants who are being held in jail pending trial as a result of the revocation of their prior release on bond, for certain specified reasons, or as a result of an increase in the amount of bond, which would cause them to remain in custody. People v. Olds, 656 P.2d 705 (Colo. 1983) (disapproved in People v. Mascarenas, 706 P.2d 404 (Colo. 1985)).

By this section, the legislature meant to enhance speedy trial rights of those who are kept in jail due to revoked bail or increased bail after the issue of their guilt has been raised by a plea of not guilty. People v. Olds, 656 P.2d 705 (Colo. 1983)(disapproved in People v. Mascarenas, 706 P.2d 404 (Colo. 1985)); People v. Fields, 697 P.2d 749 (Colo. App. 1984).

And is not to benefit one who misses preliminary hearing. The general assembly did not intend that one accused of the commission of an offense should be permitted to profit from his failure to appear at the preliminary hearing and be in a better position than those other defendants who were released on bond and who had not violated the terms of their bond, or those defendants who had been unable to post bail initially and who had remained incarcerated for the entire pretrial period after arrest. People v. Olds, 656 P.2d 705 (Colo. 1983) (disapproved in People v. Mascarenas, 706 P.2d 404 (Colo. 1985)).

A second bail bond entered after the defendant was returned to the custody of the court was not an increase of the first bond, which was forfeited and ceased to exist after the defendant failed to appear at his preliminary hearing. Therefore, the defendant's speedy trial rights were not violated when he was not brought to trial within ninety days after entry of the second bond. People v. Armendariz, 684 P.2d 252 (Colo. App. 1983).

Defendant whose bail was revoked following finding that proof was evident and presumption great in capital offense case pursuant to Art. II, § 19, Colo. Const., had no right to trial within 90 days of revocation. People v. Avery, 736 P.2d 1233 (Colo. App. 1986).

Defendant on bond may leave jurisdiction unless ordered otherwise. Generally, unless the court orders or the surety stipulates otherwise, nothing prevents a defendant on bond from leaving the jurisdiction so long as he appears at all proceedings in his case. People v. Rincon, 43 Colo. App. 155, 603 P.2d 953 (1979).

Subsection (2) modifications permitted only after arraignment. The bail modifications which are the subject of subsection (2) relate only to those bail proceedings which occur after arraignment. People v. Olds, 656 P.2d 705 (Colo. 1983)(disapproved in People v. Mascarenas, 706 P.2d 404 (Colo. 1985)); People v. Armedariz, 684 P.2d 252 (Colo. App. 1983).

The term "supervision" used in subsection (2) does not include mandatory counseling as a condition of bond for defendant arrested on domestic violence charges and alcohol-related misdemeanors. Martell v. County Court of Summit County, 854 P.2d 1327 (Colo. App. 1992).

Applied in Stephenson v. District Court, 629 P.2d 1078 (Colo. 1981); People v. Moye, 635 P.2d 194 (Colo. 1981); People v. Fields, 697 P.2d 749 (Colo. App. 1984).

16-4-104. Bail bond - alternatives.

(1) When the amount of bail is fixed by the judge of a court of record, the judge shall also determine which of the following kinds of bond shall be required for the pretrial release of the defendant:

(a) The defendant may be released from custody upon execution by him of a personal recognizance. The court may require additional obligors on the bond as a condition of granting the same.

(b) The defendant may be released from custody upon execution of bond in the full amount of the bail to be secured in any one or more, or any combination of, the following ways:

(I) By a deposit, with the clerk of the court, of an amount equal to the required bail, of cash, or stocks and bonds of a kind in which trustees are authorized to invest trust funds under the laws of this state; or

(II) By real estate situated in this state with unencumbered equity not exempt from execution owned by the accused or any other person acting as surety on the bond, which unencumbered equity shall be at least one and one-half the amount of the bail set in the bond; or

(III) By sureties worth at least one and one-half the amount of bail set in the bond or by a bail bonding agent or a cash bonding agent qualified to write bail bonds pursuant to article 7 of title 12, C.R.S.

(2) If the bond is secured by stocks or bonds, the accused or sureties shall deposit the stock and bond certificates with the clerk of the court and also file with the bond a sworn schedule which shall be approved by the clerk of the court and shall contain the following:

(a) A list of the stocks and bonds deposited describing each in sufficient detail that it may be identified; and

(b) The market value of each stock and bond; and

(c) The total market value of the stocks and bonds listed; and

(d) A statement that the affiant is the owner of the stocks and bonds listed and they are not exempt from execution; and

(e) A statement that such stocks and bonds are security for compliance by the accused with the primary condition of the bond; and

(f) A signed blank stock power for each stock certificate or registered bond deposited.

(3) (a) (I) If the bond is to be secured by real estate, the bail bonding agent shall provide the property owner with a written disclosure statement in the following form at the time an initial application is filed:

Disclosure of lien against real property

Do not sign this document until you read and understand it! This bail bond will be secured by real property you own or in which you have an interest. Failure to pay the bail bond premiums when due or the defendant's failure to comply with the conditions of bail could result in the loss of your property!

(II) The disclosure required in subparagraph (I) of this paragraph (a) shall be printed in fourteen-point bold-faced type either:

(A) On a separate and specific document attached to or accompanying the application; or

(B) In a clear and conspicuous statement on the face of the application.

(III) Before a property owner executes any instrument creating a lien against real property, the bail bonding agent shall provide the property owner with a completed copy of the instrument creating the lien against real property and the disclosure statement described in subparagraph (II) of this paragraph (a). If a bail bonding agent fails to comply fully with the requirements of subparagraphs (I) and (II) of this paragraph (a) and this subparagraph (III), any instrument creating a lien against real property shall be voidable.

(IV) The bonding agent shall deliver to the property owner a fully executed and notarized reconveyance of title, a certificate of discharge, or a full release of any lien against real property that secures performance of the conditions of a bail bond within thirty days after receiving notice that the time for appealing an order that exonerated the bail bond has expired. The bonding agent shall also deliver to the property owner the original cancelled note as evidence that the indebtedness secured by any lien instrument has been paid or that the purposes of said instrument have been fully satisfied and the original deed of trust, security agreement, or other instrument which secured the bail bond obligation. If a timely notice of appeal is filed, the thirty-day period shall begin on the day the appellate court's affirmation of the order becomes final. If the bonding agent fails to comply with the requirements of this subparagraph (IV), the property owner may petition the district court to issue an order directing the clerk of such court to execute a full reconveyance of title, a certificate of discharge, or a full release of any lien against real property created to secure performance of the conditions of the bail bond. The petition shall be verified and shall allege facts showing that the bonding agent has failed to comply with the provisions of this subparagraph (IV).

(V) Any bail bonding agent who violates this paragraph (a) shall be liable to the property owner for all damages which may be sustained by reason of the violation, plus statutory damages in the sum of three hundred dollars. The property owner shall be entitled to recover court costs and reasonable attorney fees, as determined by the court, upon prevailing in any action brought to enforce the provisions of this paragraph (a).

(b) If the bond is secured by real estate, the amount of the owner's unencumbered equity shall be determined by deducting the amount of all encumbrances listed in the owner and encumbrances certificate from the actual value of such real estate as shown on the current notice of valuation. The owner of the real estate shall file with the bond the following, which shall constitute a material part of the bond:

(I) The current notice of valuation for such real estate prepared by the county assessor pursuant to section 39-5-121, C.R.S.; and

(II) Evidence of title issued by a title insurance company or agent licensed pursuant to article 11 of title 10, C.R.S., within thirty days of the date upon which the bond is filed; and

(III) A sworn statement by the owner of the real estate that the real estate is security for the compliance by the accused with the primary condition of the bond; and

(IV) A deed of trust to the public trustee of the county in which such real estate is located which shall be executed and acknowledged by all record owners of such real estate which shall name as beneficiary the

clerk of the court approving such bond and which shall secure an amount equal to one and one-half times the amount of the bond.

(c) (I) If the bond is secured by real estate, such bond shall not be accepted by the clerk of the court unless the record owner of such property has presented to the clerk of such court the original deed of trust as set forth in subparagraph (IV) of paragraph (b) of this subsection (3) and the applicable recording fee. Upon receipt of such deed of trust and fee, the clerk of the court shall cause the deed of trust to be recorded with the clerk and recorder for the county in which the property is located.

(II) Upon satisfaction of the terms of the bond, the clerk of the court shall, within ten days of such satisfaction, execute a release of the deed of trust and an affidavit which states that the obligation for which the deed of trust had been recorded has been satisfied, either fully or partially, and that the release of such deed of trust may be recorded at the expense of the record owner of the property described in such deed of trust.

(III) If there is a forfeiture of the bond pursuant to sections 16-4-103 and 16-4-109, and if the forfeiture is not set aside pursuant to section 16-4-109 (3), the deed of trust may be foreclosed as provided by law.

(IV) If there is a forfeiture of the bond pursuant to sections 16-4-103 and 16-4-109, but the forfeiture is set aside pursuant to section 16-4-109 (3), the clerk of the court shall execute a release of the deed of trust and an affidavit which states that the obligation for which the deed of trust had been recorded has been satisfied, either fully or partially, and that the release of such deed of trust may be recorded at the expense of the record owner of the real estate described in such deed of trust.

Source: L. 72: R&RE, p. 204, § 1. **C.R.S. 1963:** § 39-4-104. **L. 89:** (1)(b)(II) amended and (3) R&RE, pp. 864, 865, §§ 9, 10, effective April 12. **L. 92:** (3) amended, p. 441, § 3, effective July 1. **L. 93:** (1)(b)(III) and (3) amended, pp. 924, 922, §§ 2, 1, effective May 28. **L. 95:** IP(1), (1)(b)(III), (3)(a)(I), (3)(a)(III), and (3)(a)(V) amended, p. 289, § 14, effective July 1. **L. 96:** (1)(b)(III) amended, p. 1186, § 14, effective June 1.

ANNOTATION

Annotator's note. Since § 16-4-104 is similar to repealed laws antecedent to CSA, C. 48, § 443, relevant cases construing those provisions have been included in the annotations to this section.

The purpose of a recognizance is not to enrich the treasury, but to serve the convenience of the party accused but not convicted, without interfering with or defeating the administration of justice. People v. Pollock, 65 Colo. 275, 176 P. 329 (1918); Allison v. People, 132 Colo. 156, 286 P.2d 1102 (1955).

A bail bond with but one surety is sufficient, notwithstanding the fact that § 19 of art. I, Colo. Const., provides for sureties, this being one of the cases where the plural includes the singular. Van Gilder v. People, 75 Colo. 515, 227 P. 386 (1924).

Sureties should be persons of sufficient financial ability and of sufficient vigilance to secure the appearance and prevent the absconding of the accused. People v. Pollock, 65 Colo. 275, 176 P. 329 (1918).

For the form and content of recognizance instrument, see Waters v. People, 4 Colo. App. 97, 35 P. 56 (1893).

For the form of bond, see People v. Mellor, 2 Colo. 705 (1875).

Deposit of percentage of full amount of bail not permitted. This section does not expressly or impliedly authorize courts to permit 10 percent cash bail deposits, and the requirement in subsection (1)(b) that the "full amount of bail" be secured negates the contention that courts may permit the deposit of a percentage of the full amount of the bail before releasing a defendant from custody. People v. District Court, 196 Colo. 116, 581 P.2d

300 (1978).

This section does not govern bail for defendants awaiting extradition. Questions of bail for defendants awaiting extradition prior to service of a governor's warrant are governed exclusively by § 16-19-117. Fullerton v. County Court, 124 P.3d 866 (Colo. App. 2005).

Applied in People v. Lepik, 629 P.2d 1080 (Colo. 1981).

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 that is accessible to the public, or within any private dwelling that 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 vehicle, as defined in section 42-1-102 (88.5), C.R.S., engaged in the transportation of persons who are students;

(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. 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 or global position monitoring of the defendant; and

(VIII) Pretrial work release of the defendant.

(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).

Source: L. 72: R&RE, p. 205, § 1. **C.R.S. 1963:** § 39-4-105. **L. 81:** (1)(p) added, p. 677, § 6, effective May 13; IP(1) amended, p. 926, § 1, effective July 1. **L. 90:** (1)(k.5) and (1)(k.7) added, p. 990, § 3, effective April 16. **L. 91:** (1)(q) and (3) added, p. 425, §§ 1, 2, effective May 31. **L. 92:** (1)(p.5) added, p. 442, § 4, effective July 1. **L. 97:** (1)(n.5) and (3)(e) added, pp. 329, 330, §§ 1, 2, effective August 6. **L. 2000:** (3)(e) amended and (3)(f) added, pp. 1994, 1995, §§ 2, 3, effective June 2. **L. 2006:** (3)(d)(VII) amended, p. 18, § 1, effective March 8. **L. 2010:** (1)(k.5) amended, (HB 10-1232), ch. 163, p. 568, § 1, effective April 28.

ANNOTATION

The primary function of bail is to assure the presence of the accused. People v. Sanders, 185 Colo. 153, 522 P.2d 735 (1974).

And this end should be met by means which impose the least possible hardship upon the accused. People v. Sanders, 185 Colo. 153, 522 P.2d 735 (1974).

Subsection (1)(m) is not unconstitutional as vesting judicial powers in the prosecutor. The limitations imposed by subsection (1)(m) are reasonable and not in violation of the doctrine of separation of powers. People v. Sanders, 185 Colo. 153, 522 P.2d 735 (1974).

District attorney's consent required in certain cases. In adopting subsection (1)(m), the general assembly determined that in certain cases the district attorney's consent to release on personal recognizance should be required. People v. Sanders, 185 Colo. 153, 522 P.2d 735 (1974).

When court to set bail. The Colorado constitution grants a defendant charged with a capital offense the right to bail unless the district attorney meets the burden of establishing at the bail hearing that the "proof is evident or the presumption great". If evidence of the proper nature and kind is not presented by the district attorney, it is incumbent upon the court, looking to the guidelines laid down in subsection (1)(h) and in the case of Stack v. Boyle (342 U.S. 1, 72 S. Ct. 1, 96 L. Ed. 3 (1951)) to set reasonable bail in compliance with the Colorado constitution and the eighth amendment of the constitution of the United States. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

Subsection (1)(o) permits a court to designate persons to prepare information concerning the accused in order to assist the judge in deciding whether to order release on personal recognizance. Pursuant to this statutory authority, the judges of the first judicial district authorized the pretrial service officers, as bond commissioners, to implement the bond schedule of the district. Although the bond schedule did not address temporary restraining orders specifically, in cases involving allegations of domestic violence, the pretrial service officers, acting as bond commissioners, were expected to deliver to the defendant a temporary restraining order pursuant to § 18-1-1001. The court concluded that, as a matter of law, these are judicial acts integral to the judicial process and therefore are cloaked in absolute quasi-judicial immunity. Whitesel v. Sengenberger, 222 F.3d 861 (10th Cir. 2000).

Notification of sureties when bail converted to personal recognizance. Subsection (1)(p) applies to a person for whom bail has not yet been fixed and who is on release under a surety bond on a pending charge different from the charge from which he seeks release on personal recognizance. People v. Anderson, 789 P.2d 1115 (Colo. App. 1990).

Subsection (1)(p) does not require the court to notify a surety of the possibility of release on an additional surety bond for new charges. People v. Soto-Gallegos, 953 P.2d 946 (Colo. App. 1997).

Relief under subsection (1)(p) not available to surety after defendant failed to appear where: A count was added charging defendant with an offense while defendant was free on a bond previously posted, trial court required no new bond, and defendant was allowed to remain free on the existing bond. The action by trial court

did not materially increase the surety's risk of non-appearance by defendant. People v. Nishikawa, 32 P.3d 630 (Colo. App. 2001).

Pretrial services program exceeded its statutory authority when it imposed a condition barring defendant from possessing weapons. This statute does not anticipate or permit the court to delegate authority to set conditions of bond to a pretrial services program. People v. Rickman, 178 P.3d 1202 (Colo. 2008).

Pretrial services program did not exceed its statutory authority when it imposed a condition barring defendant from committing a felony while on bail. Section 16-4-103 (2)(c) requires that, as a condition of every bail bond, "the released person not commit any felony while at liberty on such bail bond". Because this prohibition is statutorily mandated, it constitutes a condition of every bail bond regardless of any action by the court or pretrial services program. People v. Rickman, 178 P.3d 1202 (Colo. 2008).

Sureties' obligation on bond posted for defendant on certain drug charges terminated as a matter of law by trial court's continuation and application of the bond following the filing of habitual criminal charges without the knowledge and consent of sureties. People v. Jones, 873 P.2d 36 (Colo. App. 1994).

The substantial increase in length of mandatory minimum sentence facing defendant by subsequent filing of habitual criminal charges materially increased the risk that defendant would fail to appear for trial and materially increased the risk that sureties had contractually agreed to undertake on the drug charges. People v. Jones, 873 P.2d 36 (Colo. App. 1994).

Surety's obligations on the bond are not terminated where trial court continued the existing bond after allowing the filing of an additional felony charge in the same case without surety's knowledge and consent, and defendant did not face a substantial increase in the length of a minimum mandatory sentence. People v. Nishikawa, 32 P.3d 630 (Colo. App. 2001).

Guilty plea constitutes conviction. In the context of the bail bond statute, a plea of guilty, when accepted by the court which grants a deferred judgment and sentence, constitutes a "conviction". Evidence of the guilty plea is no longer admissible, however, after successful completion of the period of the deferred sentence. Hafelfinger v. District Court, 674 P.2d 375 (Colo. 1984).

Applied in People v. Lepik, 629 P.2d 1080 (Colo. 1981).

16-4-106. When original bond continued.

Once a bond has been executed and the person released from custody thereon, whether a charge is then pending or is thereafter filed or transferred to a court of competent jurisdiction, the original bond shall continue in effect until final disposition of the case in the trial court. If a charge filed in the county court is dismissed and the district attorney states on the record that the charge will be refiled in the district court or that the dismissal by the county court will be appealed to the district court, the county court before entering the dismissal shall fix a return date, not later than sixty days thereafter, upon which the defendant must appear in the district court and continue the bond. Any bond continued pursuant to this section is subject to the provisions of section 16-4-107.

Source: L. 72: R&RE, p. 207, § 1. **C.R.S. 1963:** § 39-4-106. **L. 90:** Entire section amended, p. 924, § 3, effective March 27.

ANNOTATION

Annotator's note. Since § 16-4-106 is similar to repealed § 39-2-17, CRS 53, and laws antecedent to CSA, C. 48, § 444, relevant cases construing those provisions have been included in the annotations to this section.

Purpose of section. The purpose of § 16-4-201 concerning bail after conviction and this section is to authorize the court to exercise discretion rather than follow a fixed policy and to permit a recognizance to remain in effect, without the necessity of a new bond, after conviction and until disposition of the case in the trial court. Trujillo v. District Court, 131 Colo. 428, 282 P.2d 703 (1955).

This section and § 16-4-201 must be read together and reconciled if possible. Rodriguez v. People, 191 Colo. 540, 554 P.2d 291 (1976).

Where defendant entered plea of guilty, surety's obligation under recognizance bond is terminated. Rodriguez v. People, 191 Colo. 540, 554 P.2d 291 (1976).

And trial court could not continue bond without first obtaining surety's consent. Rodriguez v. People, 191 Colo. 540, 554 P.2d 291 (1976).

Although the trial judge may continue the original bond to final disposition, he must obtain the consent of the surety to continue it beyond conviction. Rodriguez v. People, 191 Colo. 540, 554 P.2d 291 (1976).

Increase of surety's risk without his consent terminates obligation. When one undertakes a surety obligation, the surety undertakes a calculated risk, and events which materially increase that risk without consent of the surety terminate the obligation of the bond. People v. Smith, 645 P.2d 864 (Colo. App. 1982).

Effect of resettings of the case. Where there were resettings of a criminal case for trial at the same term, the contention of a surety on defendant's bond that he was discharged by these continuances without his consent was overruled. Van Gilder v. People, 75 Colo. 515, 227 P. 386 (1924).

Applied in Stephenson v. District Court, 629 P.2d 1078 (Colo. 1981).

16-4-107. Reduction or increase of bail - change in type of bond.

(1) Upon application by the district attorney or the defendant, the court before which the proceeding is pending may increase or decrease the amount of bail, may require additional security for a bond, may dispense with security theretofore provided, or may alter any condition of the bond.

(2) Reasonable notice of an application for modification of a bond by the defendant shall be given to the district attorney.

(3) Reasonable notice of application for modification of a bond by the district attorney shall be given to the defendant, except as provided in subsection (4) of this section.

(4) (a) Upon verified application by the district attorney or a bonding commissioner stating facts or circumstances constituting a breach or a threatened breach of any of the conditions of the bond, the court may issue a warrant commanding any peace officer to bring the defendant without unnecessary delay before the court for a hearing on the matters set forth in the application. Upon issuance of the warrant, the bonding commissioner shall notify the bail bond agent of record, if applicable. At the conclusion of the hearing, the court may enter an order authorized by subsection (1) of this section. If a bonding commissioner files an application for a hearing pursuant to this subsection (4), the bonding commissioner shall notify the district attorney, for the jurisdiction in which the application is made, of the application within twenty-four hours following the filing of the application.

(b) As used in this subsection (4), "bonding commissioner" means a person employed by a pretrial services program as described in section 16-4-105 (3), and so designated as a bonding commissioner by the chief or presiding judge of the judicial district.

(5) The district attorney has the right to appear at all hearings seeking modification of the terms and conditions of bail and may advise the court on all pertinent matters during the hearing.

Source: L. 72: R&RE, p. 207, § 1. **C.R.S. 1963:** § 39-4-107. **L. 2008:** (4) amended, p. 520, § 1, effective August 5.

ANNOTATION

Equal protection not violated. Persons detained pursuant to this section are not similarly situated to persons detained pursuant to § 16-4-103 and the difference in treatment accorded the two classes of detainees is rationally related to a legitimate state interest. People v. Fields, 697 P.2d 749 (Colo. App. 1984).

It is not incumbent upon defendant to affirmatively show validity of bond after the bond is executed. Stephenson v. District Court, 629 P.2d 1078 (Colo. 1981).

This section provides for notice where the amount or conditions of bail are to be altered. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

Court not to modify executed bond sua sponte. This section makes no provision for a trial court, sua sponte, to modify a defendant's bond once that bond has been executed. Stephenson v. District Court, 629 P.2d 1078 (Colo. 1981).

There is no prior notice requirement for exoneration of the surety when the principal is surrendered in open court. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

Notification of sureties when bail converted to personal recognizance. The notice provision for sureties in § 16-4-105 (1)(p) applies to a person for whom bail has not yet been fixed and who is on release under a surety bond on a pending charge different from the charge from which he seeks release on personal recognizance. Since defendant is not seeking release, but rather simply seeking to modify the type of bond on which he has already been released, the provisions of this section also do not apply. People v. Anderson, 789 P.2d 1115 (Colo. App. 1990).

16-4-108. Exoneration from bond liability.

(1) Any person executing a bail bond as principal or as surety shall be exonerated as follows:

(a) When the condition of the bond has been satisfied; or

(b) When the amount of the forfeiture has been paid; or

(b.5) (I) When the surety appears and provides satisfactory evidence to the court that the defendant is unable to appear before the court due to such defendant's death or the detention or incarceration of such defendant in a foreign jurisdiction if the defendant is incarcerated for a period in excess of ninety days and the state of Colorado has refused to extradite such defendant; except that, if the state extradites such defendant, all costs associated with such extradition shall be borne by the surety up to the amount of the bond.

(II) For the purposes of this paragraph (b.5), "costs associated with extradition" shall be calculated as and limited to the round-trip mileage between the Colorado court of jurisdiction and the location of the defendant's incarceration at the rate allowed for reimbursement pursuant to section 24-9-104, C.R.S., up to the amount of the bond.

(c) Upon surrender of the defendant into custody at any time before a judgment has been entered against the sureties for forfeiture of the bond, upon payment of all costs occasioned thereby. A surety may seize and surrender the defendant to the sheriff of the county wherein the bond is taken, and it is the duty of the sheriff, on such surrender and delivery to him of a certified copy of the bond by which the surety is bound, to take the person into custody and, by writing, acknowledge the surrender. If a compensated surety is exonerated by surrendering a defendant prior to the initial appearance date fixed in the bond, the court, after a hearing, may require the surety to refund part or all of the bond premium paid by the defendant if necessary to prevent unjust enrichment.

(d) Repealed.

(e) After three years have elapsed from the posting of the bond, unless a judgment has been entered against the surety or the principal for the forfeiture of the bond, or unless the court grants an extension of the three-year time period for good cause shown, upon motion by the prosecuting attorney.

(1.5) If, within ten working days after the posting of a bond by a defendant, the terms and conditions of said bond are changed or altered either by order of court or upon the motion of the district attorney or the defendant, the court, after a hearing, may order a compensated surety to refund a portion of the premium paid by the defendant, if necessary, to prevent unjust enrichment. If more than ten working days have elapsed after posting of a bond by a defendant, the court shall not order the refund of any premium.

(2) Upon entry of an order for deferred prosecution or deferred judgment as authorized in sections 18-1.3-101 and 18-1.3-102, C.R.S., sureties upon any bond given for the appearance of the defendant shall be released from liability on such bond.

Source: L. 72: R&RE, p. 207, § 1. **C.R.S. 1963:** § 39-4-108. **L. 85:** (1)(d) added and (2) amended, p. 621, §§ 1, 2, effective July 1. **L. 86:** (1)(d) repealed and (1.5) added, p. 1218, §§ 15, 16, effective May 30. **L. 2000:** (1)(e) added, p. 311, § 1, effective August 2. **L. 2002:** (2) amended, p. 1490, § 130,

effective October 1. **L. 2004:** (1)(b.5) and (1)(c) amended, p. 1757, § 16, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For note, "One Year Review of Colorado Law-1964", see 42 Den. L. Ctr. J. 140 (1965).

Annotator's note. Since § 16-4-108 is similar to repealed § 39-2-18, C.R.S. 1963, § 39-2-18, CRS 53, CSA, C. 48, § 444, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

For compensated sureties, the framework for forfeiture proceedings is provided by § 16-4-112 and not this section. People v. Diaz-Garcia, 159 P.3d 679 (Colo. App. 2006).

An accused person released on bail, is, in contemplation of law, in the custody of his sureties. People v. Loomis, 60 Colo. 202, 152 P. 143 (1915).

In the case of exoneration of a surety, the common law considers the principal to be within the custody of the surety. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

When surety can avail himself of section. The surety has the right to avail himself of the exoneration provisions of the statute for any reason sufficient to himself. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

Where denial of motion for exoneration deemed error. Where a defendant fails to appear at a scheduled hearing, then, through the surety's efforts, is located, apprehended, and taken into custody in another state, but, through the failure of the states, the defendant is not extradited and returned to custody in Colorado, a trial judge abuses his discretion in denying the surety's motion for exoneration. People v. Campbell, 633 P.2d 509 (Colo. App. 1981).

Surety not entitled to exoneration where the defendant was temporarily in the state's custody on later charges but was not surrendered into custody on the earlier charges for which the bond was posted and he was not prevented from making the appearances required on those charges. People v. Soto-Gallegos, 953 P.2d 946 (Colo. App. 1997).

No requirement of actual or threatened breach of bail conditions in requirements for exoneration. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

Subsection (1)(b.5) does not apply to postjudgment motions for exoneration from bond liability. People v. Diaz-Garcia, 159 P.3d 679 (Colo. App. 2006).

There is no prior notice requirement for exoneration of the surety when the principal is surrendered in open court. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

When sureties may seize and surrender. Sureties may seize and surrender an accused person to the sheriff of the county in which the recognizance was taken, at any time before forfeiture and execution is ordered against them. If, at the same time, a certified copy of the recognizance is delivered to the sheriff, it is his duty to take the accused into custody, and, in writing, acknowledge the surrender. People v. Loomis, 60 Colo. 202, 152 P. 143 (1915).

Surety who surrenders his principal before final judgment is exonerated under this section. Scott v. People ex rel. Bd. of Comm'rs, 64 Colo. 396, 172 P. 9 (1918).

Surrender effective before final disposition of the case. A surety on a criminal recognizance may be released from liability thereon by the surrender of the principal, even after forfeiture and judgment against him on the bond, if he acts before final disposition of the case, extending to a review on error. Van Gilder v. City & County of Denver, 104 Colo. 76, 89 P.2d 529 (1939).

But appearance for trial is not a surrender. The appearance of the defendant in a criminal case in court for trial is not equivalent to a surrender of his person by a surety on his bond. Van Gilder v. People, 75 Colo. 515, 227 P. 386 (1924).

Nor is incarceration after appearance date. The rule that incarceration of a principal on the return date of his bond permits relief from forfeiture of the bond has no application where the principal was at large and was not imprisoned until 30 days after the date he was to appear in Colorado, and the surety, through its agent, had the opportunity to return the principal to Colorado before judgment was entered and thus be absolved under our statutes of any liability other than costs incurred by the people by reason of the principal's failure to appear. Union Benefit Fire Ins. Co. v. People, 160 Colo. 211, 416 P.2d 368 (1966).

However, surety not liable if principal is arrested and jailed for another offense. Under this section where, after forfeiture but before judgment against the sureties, their principal was arrested and placed in the jail of the county under a different charge than that for which the bond was given, the sureties were entitled to a discharge from liability upon their formal offer to surrender and the payment of the costs, although they did nothing towards the rearresting and returning to custody of the prisoner. And they were not liable for costs incurred in arresting and returning their principal under a different charge than the one in which the bond was given. Huston v. People ex rel. Collins, 12 Colo. App. 271, 55 P. 262 (1898).

Or if a cause brought by the state is in fact abandoned by the state, by reason of which the presence of the accused in court is no longer required or desired for trial or matters incident thereto, the purpose of the bail bond has been served, its function fulfilled and performed, and it should thenceforth be regarded as functus officio and the formal discharge of defendant and of his sureties therefrom should be entered upon application. Herbertson v. People, 160 Colo. 139, 415 P.2d 53 (1966).

Surety needs not personally accomplish the seizure and surrender. Where defendant was stopped for a traffic offense and was taken into custody by sheriff's deputies on the outstanding warrant, surety was entitled to exoneration under this section. People v. Madison, 909 P.2d 551 (Colo. App. 1995).

The term "costs", as used in this section, includes whatever the law officers may legitimately pay out, or have a right to charge, in connection with the return of the criminal for trial. Ayres v. People, 3 Colo. App. 117, 32 P. 77 (1893).

Liability of surety for costs. Sureties must pay the expenses incurred by the county in procuring the return of their principal from another state upon a requisition. Ayres v. People, 3 Colo. App. 117, 32 P. 77 (1893).

To accomplish the purpose of giving bail, courts have been liberal in vacating judgments entered on bail bonds, exercising always a broad discretion and in proper cases preserving the equities of the public by deducting such costs and expenses as may have been incurred by the state. To hold otherwise would discourage the giving of bail and defeat the manifest purpose of the statute. Allison v. People, 132 Colo. 156, 286 P.2d 1102 (1955).

When court may require return of premium. A court has the discretion to require a surety to return all or a portion of the premium paid for a bail bond where the bond is terminated by court order. People v. Walker, 665 P.2d 154 (Colo. App. 1983), aff'd sub. nom. Yording v. Walker, 683 P.2d 788 (Colo. 1984) (decided prior to enactment of subsection (1)(d) in 1985).

Subsection (1)(c) takes precedence over bond provisions. The language of subsection (1)(c) protecting against unjust enrichment takes precedence over, and nullifies, a provision in a bond purporting to make a bond premium nonrefundable. People v. Walker, 665 P.2d 154 (Colo. App. 1983), aff'd sub. nom. Yording v. Walker, 683 P.2d 788 (Colo. 1984) (decided prior to enactment of subsection (1)(d) in 1985).

Subsection (1.5) is broader than the rule in Yording in that it permits a refund under circumstances other than an error of law, subject to the time limitation. People v. Goldsmith, 955 P.2d 561 (Colo. App. 1997).

Reincarceration of the defendant on separate charges is not included among the additional grounds for exoneration of the surety. People v. Goldsmith, 955 P.2d 561 (Colo. App. 1997).

Even though both subsections (1)(c) and (1.5) were inapplicable, court had common law authority to order bond premium refund where the bond at issue did not involve a defendant, but rather a nonparty, and surety would have been unjustly enriched if allowed to retain the bond premium. People v. Gonzales, 28 P.3d 967 (Colo. App. 2001).

The 30-day limitation referred to in subsection (1.5) applies only to the interval between the posting of the bond and any changes in its terms or conditions, and not to the time within which an order for refund of bond premium must be entered. People v. Perse, 750 P.2d 923 (Colo. App. 1988).

Determination of amount of premium refund due to defendant in case of conversion of bond into release on personal recognizance. The determination of the amount of premium refund due to the defendant is a matter within the trial court's discretion, and the court may not be reversed absent an abuse of discretion. People v. Anderson, 789 P.2d 1115 (Colo. App. 1990).

"Appearance date", as used in this subsection (1)(c), includes appearance up to the date of conviction. Thus, surety was required to refund a bond premium to a defendant whom surety surrendered prior to such date. People v. Carrethers, 867 P.2d 189 (Colo. App. 1993).

Trial court correctly entered judgment of forfeiture of bond posted by surety where, even if the notice of order of forfeiture was mailed several days late, nothing in the record indicated that surety suffered any resulting prejudice or that surety asserted any grounds under this section or § 16-4-109 for setting aside the order of forfeiture or vacating the judgment. People v. King, 924 P.2d 1092 (Colo. App. 1996).

16-4-109. Disposition of security deposits upon forfeiture or termination of bond.

(1) (a) If a defendant is released upon deposit of cash in any amount or upon deposit of any stocks or bonds and the defendant is later discharged from all liability under the terms of the bond, the clerk of the court shall return the deposit to the person who made the deposit.

(b) (I) Notwithstanding the provisions of paragraph (a) of this subsection (1), if the depositor of the cash bond is the defendant and the defendant owes court costs, fees, fines, restitution, or surcharges at the time the defendant is discharged from all liability under the terms of the bond, the court may apply the deposit toward any amount owed by the defendant in court costs, fees, fines, restitution, or surcharges. If any amount of the deposit remains after paying the defendant's outstanding court costs, fees, fines, restitution, or surcharges, the court shall return the remainder of the deposit to the defendant.

(II) Notwithstanding the provisions of paragraph (a) of this subsection (1), if the depositor of the cash bond is not the defendant, but the defendant owes court costs, fees, fines, restitution, or surcharges at the time the defendant is discharged from all liability under the terms of the bond, the court may apply the deposit toward the amount owed by the defendant in court costs, fees, fines, restitution, or surcharges if the depositor agrees in writing to the use of the deposit for such purpose. If any amount of the deposit remains after paying the defendant's outstanding court costs, fees, fines, restitution, or surcharges, the court shall return the remainder of the deposit to the depositor.

(2) Where the defendant has been released upon deposit of cash, stocks, bonds, or property or upon a surety bond secured by property, if the defendant fails to appear in accordance with the primary condition of the bond, the court shall declare a forfeiture. Notice of the order of forfeiture shall be mailed by the court to the defendant, all sureties, and all depositors or assignees of any deposits of cash or property if such sureties, depositors, or assignees have direct contact with the court, at their last known addresses. Such notice shall be sent within ten days after the entry of the order of forfeiture. If the defendant does not appear and surrender to the court having jurisdiction within thirty days from the date of the forfeiture or within that period satisfy the court that appearance and surrender by the defendant is impossible and without fault by such defendant, the court may enter judgment for the state against the defendant for the amount of the bail and costs of the court proceedings. Any cash deposits made with the clerk of the court shall be applied to the payment of costs. If any amount of such cash deposit remains after the payment of costs, it shall be applied to payment of the judgment.

(3) The court may order that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice so requires.

(4) If, within one year after judgment, the person who executed the forfeited bond as principal or as surety effects the apprehension or surrender of the defendant to the sheriff of the county from which the bond was taken or to the court which granted the bond, the court may vacate the judgment and order a remission less necessary and actual costs of the court.

(5) The provisions of this section shall not apply to appearance bonds written by compensated sureties, as defined in section 16-4-112 (2) (c), which bonds shall be subject to the provisions of section 16-4-112.

(6) On and after July 1, 2008, all moneys collected from payment toward a judgment entered for the state pursuant to subsection (2) of this section shall be transmitted to the state treasurer for deposit in the judicial stabilization cash fund created in section 13-32-101 (6), C.R.S.

Source: L. 72: R&RE, p. 208, § 1. **C.R.S. 1963:** § 39-4-109. **L. 73:** p. 1403, § 31. **L. 92:** (2) amended and (4) added, p. 443, § 7, effective July 1. **L. 99:** (5) added, p. 135, § 3, effective July 1. **L. 2007:** (6) added, p. 1537, § 28, effective May 31. **L. 2008:** (6) amended, p. 2146, § 20, effective June 4. **L. 2010:** (1) amended, (HB 10-1215), ch. 127, p. 421, § 1, effective August 11.

Cross references: For the legislative declaration contained in the 2008 act amending subsection (6), see section 1 of chapter 417, Session Laws of Colorado 2008.

ANNOTATION

Annotator's note. Since § 16-4-109 is similar to repealed § 39-2-18, C.R.S. 1963, § 39-2-18, CRS 53, and CSA, C. 48, § 444, relevant cases construing those provisions have been included in the annotations to this section.

There must be due process before any judgment may issue in connection with a bond forfeiture, and want of conformance to the procedure outlined by law is a violation of the surety's rights. Herbertson v. People, 160 Colo. 139, 415 P.2d 53 (1966).

"Forthwith" means promptly and without unnecessary delay. Notices of orders of forfeiture which were mailed to sureties 34 days and 43 days after the entry of such orders did not comply with the "forthwith" standard. Moreno v. People, 775 P.2d 1184 (Colo. 1989).

A trial court's failure to give surety "forthwith" notice does not result in a presumption of prejudice to the surety. Moreno v. People, 775 P.2d 1184 (Colo. 1989).

Forfeiture of a bond based on a defendant's failure to appear is not disfavored. Moreno v. People, 775 P.2d 1184 (Colo. 1989).

Judgment cannot be entered same day as forfeiture. In a bail bond forfeiture proceeding at a hearing to determine whether the principal is in default, judgment against the surety cannot be entered on the same day. Herbertson v. People, 160 Colo. 139, 415 P.2d 53 (1966).

Section does not authorize setting aside a judgment on a forfeiture; it only authorizes setting aside a forfeiture prior to judgment. People v. Caro, 753 P.2d 196 (Colo. 1988).

Judgment for penal sum or costs allowed. When it appears that the defendant was pursued, apprehended, and returned by the state, without any assistance from those answerable for his appearance, judgment should be entered for the penal sum of the bond, unless the court, in light of all of the circumstances surrounding defendant's failure to appear in the exercise of its sound discretion may see fit to enter judgment for a lesser amount. In no event should judgment be entered for an amount less than the full amount of costs occasioned by the defendant's failure to appear. People v. Johnson, 155 Colo. 392, 395 P.2d 19 (1964).

A judgment based on forfeiture of a criminal recognizance is final. Van Gilder v. City & County of Denver, 104 Colo. 76, 89 P.2d 529 (1939).

Surety should act promptly where recognizance forfeited. A surety on a criminal recognizance which has been forfeited who wishes to obtain relief from liability should act promptly and while evidence against the defendant is still available. Van Gilder v. City & County of Denver, 104 Colo. 76, 89 P.2d 529 (1939).

Acts of God, of the state, or of law relieve a surety from liability. A trial court has no jurisdiction to relieve the surety from liability on a bail bond except on grounds generally recognized by the law as excusing the performance of the undertaking, and such grounds exist only when the appearance of accused is made impossible by an act of God, an act of the state which is the beneficiary of the bond, or an act of law. Where the principal in a bail bond dies before the day of performance or is prevented by illness from appearing, the case is within the first category. Where the principal in a bail bond is in prison within the state, pursuant to a judgment of a court of competent jurisdiction of the state, the case comes within the second category. Where the party has been turned over to the federal court within the state by a prior bondsman and is serving a sentence by that court, or if the party has been arrested in the state where the obligation is given and sent out of the state by the governor

upon requisition from another state or foreign jurisdiction, the case falls within the third category. Allison v. People, 132 Colo. 156, 286 P.2d 1102 (1955).

Where the defendant in a criminal case is imprisoned in another state at the time his case is called for trial and cannot appear pursuant to the conditions of his bond, and the surety thereon offers to defray the costs and expenses involved in returning the defendant to Colorado upon completion of the imprisonment which prevented his attendance in the trial court, the surety is relieved from a forfeiture. Allison v. People, 132 Colo. 156, 286 P.2d 1102 (1955).

Where the defendant is not produced at all, or turns up only after a long lapse of time, the courts will ordinarily deny remission without regard to the mitigating factors asserted in connection with his nonappearance, except in cases of death, insanity, or imprisonment. People v. Johnson, 155 Colo. 392, 395 P.2d 19 (1964).

Defendant who is transferred from the state's custody to a federal agency pursuant to a detainer has never been released into the legal custody of the surety who is consequently discharged from any liability on the bond. People v. Gonzales, 745 P.2d 263 (Colo. App. 1987).

Hospitalization is valid excuse for failure to appear. The defendant's hospitalization following an automobile accident is a valid excuse for his failure to appear at a scheduled hearing. People v. Smith, 673 P.2d 1026 (Colo. App. 1983).

The standard in subsection (3) is essentially an appeal to the conscience of the court. No clear rule can be set down which will guide the trial court in every case since the facts and circumstances of each individual case must be considered in their totality. No one factor will be determinative in all cases. Owens v. People, 194 Colo. 389, 572 P.2d 837 (1977).

And court has discretion to relieve forfeiture for other reasons. Following the rule that the discretion is in the court to do as it sees fit about forfeiting a bond, matters which would appeal to the sympathy of the ordinary individual, even if not to a judge, should be put in evidence. Allison v. People, 132 Colo. 156, 286 P.2d 1102 (1955).

The decision as to whether or not a forfeited bond should be remitted is entrusted to the trial court's discretion by subsection (3) of this section and Crim. P. 46. Owens v. People, 194 Colo. 389, 572 P.2d 837 (1977).

Trial court abused its discretion where the sureties made substantial efforts to locate, seize, and surrender defendant to authorities, and defendant was in custody in the adjoining county due principally to the efforts of the sureties. People v. Mendez, 708 P.2d 126 (Colo. App. 1985).

Forfeiture proceeding not to enrich public treasury. The enriching of the public treasury is not part of the object at which a forfeiture proceeding is aimed. People v. Campbell, 633 P.2d 509 (Colo. App. 1981).

Effect of material increase of risk to bondsman. When a bondsman enters into a surety agreement, he undertakes a calculated risk, so that events which materially increase that risk have the effect of terminating the obligation. People v. Calloway, 40 Colo. App. 543, 577 P.2d 1109 (1978).

Court not required to notify surety of defendant's permitted absence. Neither the case law nor subsection (2) imposes a duty on the court to give a surety notice of the permitted absence of a defendant from a hearing. People v. Smith, 673 P.2d 1026 (Colo. App. 1983).

By approving defendant's departure from state without notice to surety, the court terminates any control the surety might have had over the defendant and the court's action discharges the surety from any obligation under a bail bond. People v. Calloway, 40 Colo. App. 543, 577 P.2d 1109 (1978).

Words "without leave" in the bond do not include departure from the jurisdiction of the court. But where the defendant given permission to absent himself only from the court and not from the court's jurisdiction, the court complies with the existing conditions of the bond contract, rather than changing them, materially or otherwise. People v. Smith, 673 P.2d 1026 (Colo. App. 1983).

Considerations in determining whether to order remission of forfeited bond. In exercising its discretion as to whether to order remission of a forfeited bond, the trial court may consider whether the defendant has been produced within a reasonable time after forfeiture, whether the people have lost any rights against the defendant,

whether the defendant's failure to appear was wilful, and whether a forfeiture will subject the surety to an extreme hardship. People v. Schliesser, 39 Colo. App. 54, 563 P.2d 377, rev'd sub nom. on other grounds Owens v. People, 194 Colo. 389, 572 P.2d 837 (1977).

Such as hardship to surety. When state incurred no expenses and lost no legal rights due to defendant's nonappearance and guarantor of bond was subjected to extreme hardship due to monthly payments on the bond, the trial court abused its discretion in denying a motion for return of the forfeited bond. Owens v. People, 194 Colo. 389, 572 P.2d 837 (1977).

The only factor which the courts of this state have considered as basis for remission where the principal disappears is whether the surety will thereby suffer extreme hardship, such hardships as will cause destitution to a family, deprive children of support and education, or creditors of their just debts. People v. Johnson, 155 Colo. 392, 395 P.2d 19 (1964).

Where defendant is produced within reasonable time after forfeiture, remission will be granted to a surety if the people have not lost any rights as a result of his nonappearance, especially if his failure to appear was other than deliberate and wilful. People v. Johnson, 155 Colo. 392, 395 P.2d 19 (1964).

Where the accused had not been returned to custody at the time of the hearing on the motion to remit the bond, and where the guarantor did not establish that he would suffer extreme hardship as a result of the forfeiture, the trial court did not abuse its discretion by denying the motion for reimbursement. People v. Gossett, 680 P.2d 1323 (Colo. App. 1984).

One of the functions of a bond is to relieve state of burden of securing appearance in court by giving bondsman a strong incentive to insure such attendance. Where person posting bond made money available to the court and did all that could be expected in attempting to secure defendant's attendance in court, purposes of bond were served and state will not be penalized by bond's remittance. People v. Saviano, 677 P.2d 414 (Colo. App. 1983).

Setting aside of bond forfeitures not warranted by this section where the defendant, released on bail after posting of bond, failed to appear at her hearing because police had told her that she would be arrested on another charge as soon as the arrest warrant for her was located. People v. Rothe, 43 Colo. App. 274, 606 P.2d 79 (1979).

Limitation on reversal of decision not to order remission. The decision not to order remission of a forfeited bond may be reversed only if it appears that the trial court has abused its discretion. People v. Schliesser, 39 Colo. App. 54, 563 P.2d 377, rev'd sub nom. on other grounds Owens v. People, 194 Colo. 389, 572 P.2d 837 (1977); People v. Rothe, 43 Colo. App. 274, 606 P.2d 79 (1979); People v. Saviano, 677 P.2d 414 (Colo. App. 1983).

Determination of "material increase of risk" to bondsman dependent upon terms of bond agreement. The court must look to the bond agreement to determine whether a trial court's action in allowing withdrawal of a guilty plea materially increases the risk of the bondsman and terminates the bondsman's surety obligation. Rodriguez v. People, 191 Colo. 540, 554 P.2d 291 (1976); People v. Tyler, 797 P.2d 22 (Colo. 1990).

Failure of district attorney to seek international extradition of defendant does not exonerate surety from liability where the defendant, a Mexican national, is located by surety in Mexico and it is known that Mexico does not extradite its nationals. People v. Bustamante-Payan, 856 P.2d 42 (Colo. App. 1993).

Applied in People v. Walker, 665 P.2d 154 (Colo. App. 1983), aff'd sub. nom. Yording v. Walker, 683 P.2d 788 (Colo. 1984).

16-4-110. Enforcement when forfeiture not set aside.

By entering into a bond, each obligor, whether he is the principal or a surety, submits to the jurisdiction of the court. His liability under the bond may be enforced, without the necessity of an independent action, as follows: The court shall order the issuance of a citation directed to the obligor to show cause, if any there be, why judgment should not be entered against him forthwith and execution issue thereon. Said citation may be served personally or by certified mail upon the obligor directed to the address given in the bond. Hearing on the citation shall be held not less than twenty days after service. The defendant's attorney and the prosecuting attorney shall be given notice of the hearing. At the conclusion of the hearing, the court may enter a judgment for the state and against the obligor, and execution shall issue thereon as on other judgments. The district attorney shall have execution issued forthwith upon the judgment and deliver it to the sheriff to be executed by levy upon the stocks, bond, or real estate which has been accepted as security for the bond.

Source: L. 72: R&RE, p. 208, § 1. **C.R.S. 1963:** § 39-4-110. **L. 73:** p. 1403, § 32.

ANNOTATION

Annotator's note. Since § 16-4-110 is similar to repealed § 39-2-18, C.R.S. 1963, relevant cases construing that provision have been included in the annotations to this section.

Following proper forfeiture, the court should issue a citation, or other process in the nature of scire facias, directing those against whom judgment is sought to appear and answer within a reasonable time. People v. Johnson, 155 Colo. 392, 395 P.2d 19 (1964).

Following an order declaring a bond forfeited, the court should issue a citation or other process in the nature of scire facias, as provided in this section and Crim. P. 46, ordering the surety to show cause why judgment should not be entered against him. E. & E. Bonding Co. v. People, 160 Colo. 185, 415 P.2d 860 (1966).

Bond is not debt until forfeiture. Where no order is ever entered by the trial court in a criminal case declaring a bail bond forfeited nor a citation or other process issued as provided in this section and Crim. P. 46, it follows that the defense that a civil complaint against the sureties for a debt on the bond failed to state a claim upon which relief could be granted is good. E & E Bonding Co. v. People, 160 Colo. 185, 415 P.2d 860 (1966).

Unnecessary to grant delay while surety searches for principal. To grant delay in order that sureties have time to search for, produce, and surrender the defendant would be without warrant. People v. Johnson, 155 Colo. 392, 395 P.2d 19 (1964).

Effect of material increase of risk to bondsman. When a bondsman enters into a surety agreement, he undertakes a calculated risk, so that events which materially increase that risk have the effect of terminating the obligation. People v. Calloway, 40 Colo. App. 543, 577 P.2d 1109 (1978).

By approving defendant's departure from state without notice to surety, the court terminates any control the surety might have had over the defendant and the court's action discharges the surety from any obligation under a bail bond. People v. Calloway, 40 Colo. App. 543, 577 P.2d 1109 (1978).

16-4-111. Type of bond in certain misdemeanor cases.

(1) In exercising the discretion mentioned in section 16-4-104, the judge shall release the accused person upon personal recognizance if the charge is a class 3 misdemeanor or a petty offense, or any unclassified offense for a violation of which the maximum penalty does not exceed six months' imprisonment, and he shall not be required to supply a surety bond, or give security of any kind for his appearance for trial other than his personal recognizance, unless one or more of the following facts are found to be present:

(a) The arrested person fails to sufficiently identify himself; or

(b) The arrested person refuses to sign a personal recognizance; or

(c) The continued detention or posting of a surety bond is necessary to prevent imminent bodily harm to the accused or to another; or

(d) The arrested person has no ties to the jurisdiction of the court reasonably sufficient to assure his appearance, and there is substantial likelihood that he will fail to appear for trial if released upon his personal recognizance; or

(e) The arrested person has previously failed to appear for trial for an offense concerning which he had given his written promise to appear; or

(f) There is outstanding a warrant for his arrest on any other charge or there are pending proceedings against him for suspension or revocation of parole or probation.

Source: L. 72: R&RE, p. 208, § 1. **C.R.S. 1963:** § 39-4-111.

16-4-112. Enforcement procedures for compensated sureties - definitions.

(1) (a) The general assembly hereby finds, determines, and declares that the simplicity, effectiveness, and uniformity of bail forfeiture procedures applicable to compensated sureties who are subject to the regulatory authority of the Colorado division of insurance are matters of statewide concern.

(b) It is the intent of the general assembly in adopting this section to:

(I) Adopt a board system that will simplify and expedite bail bond forfeiture procedures by authorizing courts to bar compensated sureties who fail to pay forfeiture judgments from writing further bonds;

(II) Minimize the need for day-to-day involvement of the division of insurance in routine forfeiture enforcement; and

(III) Reduce court administrative workload.

(2) As used in this section, unless the context otherwise requires:

(a) "Bail insurance company" means an insurer as defined in section 10-1-102 (13), C.R.S., engaged in the business of writing bail appearance bonds through bonding agents, which company is subject to regulation by the division of insurance in the department of regulatory agencies.

(b) "Board system" means any reasonable method established by a court to publicly post or disseminate the name of any compensated surety who is prohibited from posting bail bonds.

(c) "Compensated surety" means any person in the business of writing bail appearance bonds who is subject to regulation by the division of insurance in the department of regulatory agencies, including bonding agents and bail insurance companies. Nothing in this paragraph (c) shall be construed to authorize bail insurance companies to write bail bonds except through licensed bail bonding agents.

(d) "On the board" means that the name of a compensated surety has been publicly posted or disseminated by a court as being ineligible to write bail bonds pursuant to paragraph (e) or (f) of subsection (5) of this section.

(3) Each court of record in this state shall implement a board system for the recording and dissemination of the names of those compensated sureties who are prohibited from posting bail bonds in the state due to an unpaid judgment as set forth in this section.

(4) By entering into a bond, each obligor, including the bond principal and compensated surety, submits to the jurisdiction of the court and acknowledges the applicability of the forfeiture procedures set forth in this section.

(5) Liability of bond obligors on bonds issued by compensated sureties may be enforced, without the necessity of an independent action, as follows:

(a) In the event a defendant does not appear before the court and is in violation of the primary condition of an appearance bond, the court may declare the bond forfeited.

(b) (I) If a bond is declared forfeited by the court, notice of the bail forfeiture order shall be served on the bonding agent by certified mail and on the bail insurance company by regular mail within ten days

after the entry of said forfeiture. If the compensated surety on the bond is a cash bonding agent, only the cash bonding agent shall be notified of the forfeiture. Service of notice of the bail forfeiture on the defendant is not required.

(II) The notice described in subparagraph (I) of this paragraph (b) shall include, but need not be limited to:

(A) A statement intended to inform the compensated surety of the entry of forfeiture;

(B) An advisement that the compensated surety has the right to request a show cause hearing pursuant to subparagraph (III) of this paragraph (b) within fifteen days after receipt of notice of forfeiture, by procedures set by the court; and

(C) An advisement that if the compensated surety does not request a show cause hearing pursuant to subparagraph (III) of this paragraph (b), judgment shall be entered upon expiration of thirty days following the entry of forfeiture.

(III) A compensated surety, upon whom notice of a bail forfeiture order has been served, shall have fifteen days after receipt of notice of such forfeiture to request a hearing to show cause why judgment on the forfeiture should not be entered for the state against the compensated surety. Such request shall be granted by the court and a hearing shall be set within thirty days after entry of forfeiture or at the court's earliest convenience. At the conclusion of the hearing requested by the compensated surety, if any, the court may enter judgment for the state against the compensated surety, or the court may in its discretion order further hearings. Upon expiration of thirty days after the entry of forfeiture, the court shall enter judgment for the state against the compensated surety if the compensated surety did not request within fifteen days after receipt of notice of such forfeiture a hearing to show cause.

(IV) If such a show cause hearing was timely set but the hearing did not occur within thirty days after the entry of forfeiture, any entry of judgment at the conclusion of the hearing against the compensated surety shall not be vacated on the grounds that the matter was not timely heard. If judgment is entered against a compensated surety upon the conclusion of a requested show cause hearing, and such hearing did not occur within thirty days after the entry of forfeiture, execution upon said judgment shall be automatically stayed for no more than one hundred twenty days after entry of forfeiture.

(V) (A) If at any time prior to the entry of judgment, the defendant appears in court, either voluntarily or in custody after surrender or arrest, the court shall on its own motion direct that the bail forfeiture be set aside and the bond exonerated at the time the defendant first appears in court; except that, if the state extradites such defendant, all necessary and actual costs associated with such extradition shall be borne by the surety up to the amount of the bond.

(B) If, at a time prior to the entry of judgment, the surety provides proof to the court that the defendant is in custody in any other jurisdiction within the state, the court shall on its own motion direct that the bail forfeiture be set aside and the bond exonerated; except that, if the court extradites the defendant, all necessary and actual costs associated with the extradition shall be borne by the surety up to the amount of the bond. If the court elects to extradite the defendant, any forfeiture will be stayed until such time the defendant appears in the court where the bond returns.

(C) A compensated surety shall be exonerated from liability upon the bond by satisfaction of the bail forfeiture judgment, surrender of the defendant, or order of the court. If the surety provides proof to the court that the defendant is in custody in any other jurisdiction within the state, within ninety days after the entry of judgment, the court shall on its own motion direct that the bail forfeiture judgment be vacated and the bond exonerated; except that, if the court extradites the defendant, all necessary and

actual costs associated with the extradition shall be borne by the surety up to the amount of the bond. If the court elects to extradite the defendant, any judgment will be stayed until the time the defendant appears in the court where the bond returns.

(c) Execution upon said bail forfeiture judgment shall be automatically stayed for ninety days from the date of entry of judgment; except that, if judgment is entered against a compensated surety upon the conclusion of a requested show cause hearing, and such hearing did not occur within thirty days after the entry of forfeiture, the judgment shall be automatically stayed as set forth in subparagraph (IV) of paragraph (b) of this subsection (5).

(d) Upon the expiration of the stay of execution described in paragraph (c) of this subsection (5), the bail forfeiture judgment shall be paid forthwith by the compensated surety, if not previously paid, unless the defendant appears in court, either voluntarily or in custody after surrender or arrest, or the court enters an order granting an additional stay of execution or otherwise vacates the judgment.

(e) If a bail forfeiture judgment is not paid on or before the expiration date of the stay of execution described in paragraph (c) of this subsection (5), the name of the bonding agent shall be placed on the board of the court that entered the judgment. The bonding agent shall be prohibited from executing any further bail bonds in this state until the judgment giving rise to placement on the board is satisfied, vacated, or otherwise discharged by order of the court.

(f) If a bail forfeiture judgment remains unpaid for thirty days after the name of the bonding agent is placed on the board, the court shall send notice by certified mail to the bail insurance company for whom the bonding agent has executed the bond that if said judgment is not paid within fifteen days after the date of mailing of said notice, the name of the bail insurance company shall be placed on the board and such company shall be prohibited from executing any further bail bonds in this state until the judgment giving rise to placement on the board is satisfied, vacated, or otherwise discharged by order of the court.

(g) A compensated surety shall be removed forthwith from the board only after every judgment for which the compensated surety was placed on the board is satisfied, vacated, or discharged or stayed by entry of an additional stay of execution. No compensated surety shall be placed on the board in the absence of the notice required by paragraph (b) or (f) of this subsection (5).

(h) The court may order that a bail forfeiture judgment be vacated and set aside or that execution thereon be stayed upon such conditions as the court may impose, if it appears that justice so requires.

(i) A compensated surety shall be exonerated from liability upon the bond by satisfaction of the bail forfeiture judgment, surrender of the defendant, or by order of the court. If the defendant appears in court, either voluntarily or in custody after surrender or arrest, within ninety days after the entry of judgment, the court, at the time the defendant first appears in court, shall on its own motion direct that the bail forfeiture judgment be vacated and the bond exonerated; except that, if the state extradites such defendant, all necessary and actual costs associated with such extradition shall be borne by the surety up to the amount of the bond.

(j) If, within one year after payment of the bail forfeiture judgment, the compensated surety effects the apprehension or surrender of the defendant and provides reasonable notice to the court to which the bond returns that the defendant is available for extradition, the court shall vacate the judgment and order a remission of the amount paid on the bond less any necessary and actual costs incurred by the state and the sheriff who has actually extradited the defendant.

(k) Bail bonds shall be deemed valid notwithstanding the fact that a bond may have been written by a

compensated surety who has been placed on the board pursuant to paragraph (e) or (f) of this subsection (5) and is otherwise prohibited from writing bail bonds. The ineligibility of a compensated surety to write bonds because the name of the compensated surety has been placed on the board pursuant to paragraph (e) or (f) of this subsection (5) shall not be a defense to liability on any appearance bond accepted by a court.

(l) The automatic stay of execution upon a bail forfeiture judgment as described in paragraph (c) of this subsection (5) shall expire pursuant to its terms unless the defendant appears and surrenders to the court having jurisdiction or satisfies the court that appearance and surrender by the defendant was impossible and without fault by such defendant. The court may order that a forfeiture be set aside and judgment vacated as set forth in paragraph (h) of this subsection (5).

Source: L. 99: Entire section added, p. 131, § 2, effective July 1. **L. 2003:** (2)(a) amended, p. 623, § 39, effective July 1. **L. 2004:** (5)(b)(V) amended, p. 1755, § 12, effective July 1.

ANNOTATION

Subsection (5)(h) authorizes a trial court to order that a bail forfeiture judgment be set aside upon such conditions as the court may impose, "if it appears that justice so requires". This standard is essentially an appeal to the conscience of the court. No clear rule can be set down that will guide the trial court in every instance, because the court must consider the totality of facts and circumstances in each individual case. People v. Escalera, 121 P.3d 306 (Colo. App. 2005); People v. Diaz-Garcia, 159 P.3d 679 (Colo. App. 2006).

Factors the court should consider include: (1) The willfulness of the defendant's violations of the conditions of bail; (2) the surety's participation in locating or apprehending the defendant; (3) the cost, inconvenience, and prejudice suffered by the state resulting from the violation; (4) any intangible costs; (5) the public interest in ensuring the defendant's appearance; and (6) any other mitigating factors. These factors encompass the principle that generally only acts of God, of the state, or of law will relieve a surety from liability. People v. Bustamante-Payan, 856 P.2d 42 (Colo. App. 1993) (decided under former § 16-4-109 (3)); People v. Escalera, 121 P.3d 306 (Colo. App. 2005); People v. Diaz-Garcia, 159 P.3d 679 (Colo. App. 2006).

In exercising its discretion, a trial court should be mindful of the policies concerning bail, including the policy that sureties should not be penalized when it appears they are unable, through no fault of their own, to perform the condition of the bond. People v. Escalera, 121 P.3d 306 (Colo. App. 2005).

16-4-201. Bail after conviction.

(1) (a) After conviction, either before or after sentencing, the defendant may orally, or in writing, move for release on bail pending determination of a motion for a new trial or motion in arrest of judgment or during any stay of execution or pending review by an appellate court, and, except in cases where the defendant has been convicted of a capital offense, the trial court, in its discretion, may continue the bond given for pretrial release, or may release the defendant on increased bail, or require bond under one or more of the alternatives set forth in section 16-4-104.

(b) The district attorney must be present at the time the court passes on a defendant's motion for release on bail after conviction.

(c) No bond shall be continued in effect following a plea of guilty or of nolo contendere or following conviction unless the written consents of the sureties, if any, are filed of record. No court shall require the posting of any form of bond that allows for the continuance of said bond after a plea of guilty or of nolo contendere or following conviction without the filing of record of written consents of the sureties, if any.

(d) For a defendant who has been convicted of a felony offense, a condition of bail bond shall be that the court shall require the defendant to execute or subscribe a written prior waiver of extradition stating that the defendant consents to extradition to this state and waives all formal procedures incidental to extradition proceedings in the event that he or she is arrested in another state while released on such bail bond and acknowledging that he or she shall not be admitted to bail in any other state pending extradition to this state.

(2) After conviction, a defendant who is granted probation pursuant to section 18-1.3-202, C.R.S., may orally, or in writing, move for a stay of probation pending determination of a motion for a new trial or a motion in arrest of judgment or pending review by an appellate court. The trial court, in its discretion, may grant a stay of probation and require the defendant to post an appeal bond under one or more of the alternatives set forth in section 16-4-104. The district attorney shall be present at the time the court passes on a defendant's motion for stay of probation after conviction.

Source: L. 72: R&RE, p. 209, § 1. **C.R.S. 1963:** § 39-4-201. **L. 85:** Entire section amended, p. 621, § 3, effective July 1. **L. 94:** Entire section amended, p. 97, § 2, effective July 1. **L. 2002:** (2) amended, p. 1490, § 131, effective October 1. **L. 2006:** (1) amended, p. 341, § 3, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Annotator's note. Since § 16-4-201 is similar to repealed § 39-2-19, CRS 53, and laws antecedent to CSA, C. 48, § 443, relevant cases construing those provisions have been included in the annotations to this section.

The court had authority at common law to admit to bail after conviction. People v. Junes, 77 Colo. 38, 233 P. 1109 (1925).

The trial court retains jurisdiction to grant or deny an appeal bond even after the defendant has filed a notice of appeal. The trial court retains jurisdiction to act with respect to matters which are not relative to or do not affect the order or judgment on appeal. Since the granting or denial of an appeal bond has no impact or

bearing upon the underlying conviction or related issues pending on appeal, the trial court retains jurisdiction. People v. Stewart, 26 P.3d 17 (Colo. App. 2000), rev'd on other grounds, 55 P.3d 107 (Colo. 2002).

Purpose of section. The purpose of § 16-4-106 and this section is to authorize the court to exercise discretion rather than follow a fixed policy and to permit a recognizance to remain in effect, without the necessity of a new bond, after conviction and until disposition of the case in the trial court. Trujillo v. District Court, 131 Colo. 428, 282 P.2d 703 (1955).

Section 16-4-106 and this section must be read together and reconciled if possible. Rodriguez v. People, 191 Colo. 540, 554 P.2d 291 (1976).

Power to admit to bail after conviction is discretionary with the trial court; it is not a matter of right. People v. Junes, 77 Colo. 38, 233 P. 1109 (1925).

Entry of guilty verdict or acceptance of guilty plea completes conviction. For purposes of the bail bond statute, a "conviction" occurs and is complete either upon the entry of a guilty verdict following trial or upon the acceptance of a plea of guilty, either to the original charge or to a lesser included charge. People v. Bartsch, 37 Colo. App. 52, 543 P.2d 1273 (1975).

"Conviction" occurs upon entry of a plea of guilty. Rodgriguez v. People, 191 Colo. 540, 554 P.2d 291 (1976).

The word "conviction" in this section cannot include sentencing; it must refer to an occurrence before sentence. People v. Bartsch, 37 Colo. App. 52, 543 P.2d 1273 (1975).

Misdescription of crime in recognizance, after conviction, is not fatal. People v. Junes, 77 Colo. 38, 233 P. 1109 (1925).

Where defendant entered plea of guilty, surety's obligation under recognizance bond was terminated. Rodriguez v. People, 191 Colo. 540, 554 P.2d 291 (1976).

And trial court could not continue bond without first obtaining surety's consent. Rodriguez v. People, 191 Colo. 540, 554 P.2d 291 (1976).

Although the trial judge may continue the original bond to final disposition, he must obtain the consent of the surety to continue it beyond conviction. Rodriguez v. People, 191 Colo. 540, 554 P.2d 291 (1976).

This section does not require separate or renewed consent of sureties at various stages of the proceeding. O'Neil v. People, 198 Colo. 9, 595 P.2d 235 (1979).

Statutes relating to bail constitute part of the surety's contract. People v. Hampton, 662 P.2d 498 (Colo. App. 1983).

Applicability of pretrial bond to post-trial period. While the terms of the original pretrial bond may also cover the post-trial period, without such a provision, this section is controlling as to post-trial continuances of a bond. Where the language and terms of the original bond do not provide the court with the requisite written consent to continue liability beyond conviction, oral statements to the court, after the defendant fails to appear, do not bind the surety. People v. Hampton, 662 P.2d 498 (Colo. App. 1983).

Where contract deemed to impose postconviction liability. By executing bail bond contracts containing language binding them until the final sentence or order of the court, sureties are deemed to have given the statutorily required written consent to continue their liability on the bonds after conviction and until sentencing. O'Neil v. People, 198 Colo. 9, 595 P.2d 235 (1979).

Defendant's tender of signed petition and stipulation constituted a "plea of guilty" within the meaning of the bond statute, and a formal statement by the court accepting the guilty plea was not necessary. People v. Hernandez, 902 P.2d 846 (Colo. App. 1995).

A conviction is not necessary to exonerate the surety; a plea of guilty suffices. People v. Hernandez, 902 P.2d 846 (Colo. App. 1995).

Entry of a guilty plea constitutes an "answer" to the charges and satisfies the terms of a bond that bound the surety until the defendant "answered" the charges against him. People v. Hernandez, 902 P.2d 846 (Colo. App. 1995).

Applied in People v. Tyler, 784 P.2d 815 (Colo. App. 1989).

16-4-201.5. Right to bail after a conviction - exceptions.

(1) The court may grant bail after a person is convicted, pending sentencing or appeal, only as provided by this part 2; except that no bail is allowed for persons convicted of:

(a) Murder;

(b) Any felony sexual assault involving the use of a deadly weapon;

(c) Any felony sexual assault committed against a child who is under fifteen years of age;

(d) A crime of violence, as defined in section 18-1.3-406, C.R.S.;

(e) Any felony during the commission of which the person used a firearm;

(f) A crime of possession of a weapon by a previous offender, as described in section 18-12-108 (2) (b), (2) (c), (4) (b), (4) (c), or (5), C.R.S.; or

(g) Child abuse, as described in section 18-6-401 (7) (a) (I), C.R.S.

(2) The court shall not set bail that is otherwise allowed pursuant to subsection (1) of this section unless the court finds that:

(a) The person is unlikely to flee and does not pose a danger to the safety of any person or the community; and

(b) The appeal is not frivolous or is not pursued for the purpose of delay.

(3) The provisions of this section shall apply to offenses committed on or after January 1, 1995.

Source: L. 99: Entire section added, p. 57, § 8, effective March 15. **L. 2000:** (1) amended, p. 635, § 6, effective July 1. **L. 2002:** (1)(d) amended, p. 1490, § 132, effective October 1. **L. 2007:** (1)(e) and (1)(f) amended and (1)(g) added, p. 1686, § 2, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1)(d), see section 1 of chapter 318, Session Laws of Colorado 2002.

16-4-202. Appeal bond hearing - factors to be considered.

(1) The court shall consider the following factors in deciding whether or not an appeal bond should be granted and determining the amount of bail and the type of bond to be required:

(a) The nature and circumstances of the offense before the court and the sentence imposed for that offense;

(b) The defendant's length of residence in the community;

(c) The defendant's employment, family ties, character, reputation, and mental condition;

(d) The defendant's past criminal record and record of appearance at court proceedings;

(e) Any showing of intimidation or harassment of witnesses or potential witnesses, or likelihood that the defendant will harm or threaten any person having a part in the trial resulting in conviction;

(f) Any other criminal charges pending against the defendant and the potential sentences should the defendant be convicted of those charges;

(g) The circumstances of, and sentences imposed in, any criminal case in which the defendant has been convicted but execution stayed pending appeal;

(h) The likelihood that the defendant will commit additional criminal offenses during the pendency of such defendant's appeal; and

(i) The defendant's likelihood of success on appeal.

Source: L. 72: R&RE, p. 209, § 1. **C.R.S. 1963:** § 39-4-202. **L. 93:** Entire section amended, p. 1726, § 3, effective July 1.

ANNOTATION

Trial court must hold hearing and make findings on defendant's motion for an appeal bond. People v. Yi, 741 P.2d 1264 (Colo. App. 1987).

But defendant not entitled to a hearing on a motion for an appeal bond pending appeal of a postconviction order, since defendant had already had the opportunity for and the benefit of a meaningful appellate review of his conviction. People v. Roca, 17 P.3d 835 (Colo. App. 2000).

16-4-203. Appeal bond hearing - order.

(1) After considering the factors set forth in section 16-4-202, the court may enter one of the following orders:

(a) Deny the defendant appeal bond; or

(b) Repealed.

(c) Grant the defendant appeal bond.

(2) If the court determines that an appeal bond should be granted, the court shall set the amount of bail and order either:

(a) An appeal bond in the amount of the bail to be executed and secured by depositing cash or property as provided by statute or by an approved surety or sureties; or

(b) An appeal bond in the amount of the bail to be executed on the personal recognizance of the defendant.

(2.5) If the court determines that an appeal bond should be granted, the court shall provide as an explicit condition of the appeal bond that the defendant not harass, molest, intimidate, retaliate against, or tamper with the victim of or any prosecution witnesses to the crime, unless the court makes written findings that such condition is not necessary.

(3) In addition to the above, the court may:

(a) Place the defendant in the custody of the probation department or a designated person who agrees to supervise him;

(b) Place restrictions on the travel, activities, associations, or place of abode of the defendant during the pendency of the appeal;

(c) Impose any other condition deemed necessary to assure defendant's appearance as required.

(4) Upon written motion of the state or the defendant, the sentencing court may increase or reduce the amount of appeal bond, alter the security for or conditions of the appeal bond, or revoke the appeal bond. Notice of hearing on the motion shall be given in the manner provided in section 16-4-107.

(5) If the defendant has been charged with committing another felony or class 1 misdemeanor while he is at liberty on an appeal bond, and probable cause has been found with respect to such other felony or class 1 misdemeanor or the defendant has waived his right to a probable cause determination as to the felony or class 1 misdemeanor, the court shall revoke his appeal bond on motion of the attorney general or district attorney.

Source: L. 72: R&RE, p. 210, § 1. **C.R.S. 1963:** § 39-4-203. **L. 82:** (1)(a) amended and (1)(b) repealed, p. 307, §§ 1, 2, effective March 17. **L. 94:** (2.5) added, p. 2022, § 1, effective June 3.

ANNOTATION

Law reviews. For article, "Review of New Legislation Relating to Criminal Law", see 11 Colo. Law. 2148 (1982).

Imposition of a "cash only" appeal bond is within a trial court's authority and discretion. People v. Hoover, 119 P.3d 564 (Colo. App. 2005).

16-4-204. Appellate review of terms and conditions of bail or appeal bond.

(1) After entry of an order pursuant to section 16-4-107 or 16-4-201, the defendant or the state may seek review of said order by filing a petition for review in the appellate court. If an order has been entered pursuant to section 16-4-104, 16-4-107, or 16-4-201, the petition shall be the exclusive method of appellate review.

(2) The petition shall be in writing, shall be served as provided by court rule for service of motions, and shall have appended thereto a transcript of the hearing held pursuant to section 16-4-107 or 16-4-203. The opposing party may file a response thereto within five days or as provided by court rule.

(3) After review, the appellate court may:

(a) Remand the petition for further hearing if it determines that the record does not disclose the findings upon which the court entered the order; or

(b) Order the trial court to modify the terms and conditions of bail or appeal bond; or

(c) Order the trial court to modify the terms and conditions of bail or appeal bond and remand for further hearing on additional conditions of bail or appeal bond; or

(d) Dismiss the petition.

(4) Nothing contained in this section shall be construed to deny any party the rights secured by section 21 of article II of the Colorado constitution.

Source: L. 72: R&RE, p. 211, § 1. **C.R.S. 1963:** § 39-4-204.

ANNOTATION

Annotator's note. Since § 16-4-204 is similar to repealed § 39-2-17, CRS 53, relevant cases construing that provision have been included in the annotations to this section.

Review of excessive bail. Where the bond fixed by the trial court in a criminal case is so grossly excessive as to amount to a denial of the right of accused to be admitted to bail in a reasonable amount, the supreme court will direct that the accused be admitted to bail in reasonable amount. Altobella v. District Court, 153 Colo. 143, 385 P.2d 663 (1963).

If the bail is deemed excessive, relief may be sought by suitable proceedings, but not through appeal after conviction of the crime charged. Corbett v. People, 153 Colo. 457, 387 P.2d 409 (1963), cert. denied, 377 U.S. 939, 84 S. Ct. 1346, 12 L. Ed.2d 302 (1964).

Review of refusal to admit prisoner to bail. Where a petitioner is adjudged guilty of contempt of court for refusal to answer questions before the grand jury and is sentenced to four months in jail, refusal of the trial court to stay execution or admit the petitioner to bail pending review by the supreme court is an abuse of discretion. Smaldone v. People, 153 Colo. 208, 385 P.2d 127 (1963).

A claim of error that court refused to admit defendant to bail may be raised by appropriate proceedings, but not by appeal after conviction of the crime charged. Corbett v. People, 153 Colo. 457, 387 P.2d 409 (1963), cert. denied, 377 U.S. 939, 84 S. Ct. 1346, 12 L. Ed.2d 302 (1964).

Applied in People v. Velasquez, 641 P.2d 943 (Colo. 1982), appeal dismissed, 459 U.S. 805, 103 S. Ct. 28, 74 L. Ed.2d 43 (1982), reh'g denied, 459 U.S. 1138, 103 S. Ct. 774, 74 L. Ed.2d 986 (1983).

16-4-205. When appellate court may fix appeal bond.

If a trial court fails or refuses to grant or deny an appeal bond within forty-eight hours following application for such bond, the defendant may move the appellate court for such an order, and that court shall promptly hear and rule upon the motion.

Source: L. 72: R&RE, p. 211, § 1. **C.R.S. 1963:** § 39-4-205.

16-4-301. Short title.

This part 3 shall be known and may be cited as the "Uniform Rendition of Accused Persons Act", and shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Source: L. 72: R&RE, p. 213, § 1. **C.R.S. 1963:** § 39-4-304.

16-4-302. Arrest of person illegally in state.

(1) If a person who has been charged with crime in another state and released from custody prior to final judgment, including the final disposition of any appeal, is alleged to have violated the terms and conditions of his release, and is present in this state, a designated agent of the court, judge, or magistrate who authorized the release may request the issuance of a warrant for the arrest of the person and an order authorizing his return to the demanding court, judge, or magistrate. Before the warrant is issued, the designated agent shall file with the judge of a court of record of this state the following documents:

(a) An affidavit stating the name and whereabouts of the person whose return is sought, the crime with which the person was charged, the time and place of the crime charged, and the status of the proceedings against him; and

(b) A certified copy of the order or other document specifying the terms and conditions under which the person was released from custody; and

(c) A certified copy of an order of the demanding judge, court, or magistrate stating the manner in which the terms and conditions of the release have been violated and designating the affiant its agent for seeking the return of the person.

(2) Upon initially determining that the affiant is a designated agent of the demanding judge, court, or magistrate, and that there is probable cause for believing that the person whose return is sought has violated the terms and conditions of his release, the judge of this state shall issue a warrant to a peace officer of this state for the person's arrest.

(3) The judge of this state shall notify the district attorney of his action and shall direct him to investigate the case and to ascertain the validity of the affidavits and documents required by subsection (1) of this section and the identity and authority of the affiant.

Source: L. 72: R&RE, p. 211, § 1. **C.R.S. 1963:** § 39-4-301.

16-4-303. Hearing and right to counsel.

(1) The person whose return is sought shall be brought before the judge of this state immediately upon arrest pursuant to the warrant; whereupon the judge shall set a time and place for hearing and shall advise the person of his right to have the assistance of counsel, to confront the witnesses against him, and to produce evidence in his own behalf at the hearing.

(2) The person whose return is sought may at this time in writing waive the hearing and agree to be returned to the demanding court, judge, or magistrate. If a waiver is executed, the judge shall issue an order pursuant to section 16-4-304.

(3) The judge may impose conditions of release authorized by the laws of this state which will reasonably assure the appearance at the hearing of the person whose return is sought.

Source: L. 72: R&RE, p. 212, § 1. **C.R.S. 1963:** § 39-4-302.

16-4-304. Order of return to demanding court.

The district attorney shall appear at the hearing and report to the judge the results of his investigation. If the judge finds that the affiant is a designated agent of the demanding court, judge, or magistrate, and that the person whose return is sought was released from custody by the demanding court, judge, or magistrate, and that the person has violated the terms or conditions of his release, the judge shall issue an order authorizing the return of the person to the custody of the demanding court, judge, or magistrate forthwith.

Source: L. 72: R&RE, p. 212, § 1. **C.R.S. 1963:** § 39-4-303.