

Colorado Commission on Criminal and Juvenile Justice

2008 Bond Reform Recommendations

L-7 BOND-TO-THE-COURT SYSTEM

Draft legislation to permit judicial districts to develop a percentage bond-to-the-court (see HB 08-1382), as is provided by the federal court system. Such percentage bond does not eliminate other types of bonds.¹

DISCUSSION

The current bonding process creates a variety of difficult challenges for the inmate, the inmate's family, and the community. Specifically, there are disproportionate and punitive consequences simply from the inability to make bond (e.g., loss of job, income, housing, children, etc.). By allowing judicial districts to develop a percentage bond-to-the-court system, bond amounts could be made more reasonable and attainable for the individual.

National data show that two-thirds of criminal defendants are required to post bond in order to be released pre-trial and 87 percent of felony defendants are sufficiently indigent as to receive either a court-appointed attorney or a public-defender.² Thus, it is not surprising that 56 percent of the inmates being held in local jails have not been convicted of any crime but are instead simply awaiting adjudication of their case.³ It is reasonable then to understand that financial bond requests should be attainable to the individual. This corresponds with bail standards set by the American Bar Association (ABA) and the National District Attorney's Association (NDAA). Specifically, it is stated that financial bail/bond should be used minimally or as a last resort (American Bar Association, 2003, Standard 10-5.3(a)). In addition, "there should be a presumption that the defendant is entitled to be released on order to appear or on personal recognizance" and that financial guarantees should only be applied when absolutely necessary (National District Attorney's Association, 1991, Standard 45.5(a)(1)). National Prosecution Standards: Second Edition Standard 45.5(a)(1).⁴

ACTION TO DATE 2008

Recommendation approved by the Commission.

ACTION TO DATE 2009

No action taken on this recommendation in 2009.

BARRIER

Insufficient support by key stakeholders to move forward with this recommendation during the FY 2009 legislative session

UPDATE 2010

No action – recommendation only.

¹ This bail bond alternative, which would require legislation by amendments to C.R.S. 16-4-104 and 105, is already in potential draft form in House Bill 08-1382 from the last legislative session.

² Cohen, T.H., & Reaves, B.A. (2006). *Felony defendants in large urban counties*. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.

³ Sabol, W.J., Minton, T.D., & Harrison, P.M. (2007). *Prison and jail inmates at midyear 2006*. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.

⁴ Jefferson County Justice Services, Criminal Justice Planning has been reviewing state and national research and practices on bonding for the past year and will be issuing a comprehensive report of findings and recommendations in early 2009. The Jefferson County report may identify other areas of reform that the working group on the statewide bonding schedule may want to consider. Representatives from Jefferson County who have been working on the bond project have been invited to participate in CCJJ task force discussions of this issue.

L-8 COURT RETENTION OF BOND IN BOND-TO-THE-COURT SYSTEM

When courts use the percentage bond-to-the-court, per Recommendation L-7, and the court plays the role of the surety, it shall retain a percentage of the bond.

DISCUSSION

Just as a bondsman keeps a set percentage of a bond for profit, this legislation would allow the court to retain a predetermined percentage of the bond to pay for programs, including the bonding program and other pretrial services.

ACTION TO DATE 2008

Recommendation approved by the Commission.

ACTION TO DATE 2009

No action taken on this recommendation in 2009.

BARRIER

Insufficient support by key stakeholders to move forward with this recommendation during the FY 2009 legislative session

UPDATE 2010

No action – recommendation only.

L-9 BOND APPLIED TO PRIORITY OF PAYMENTS

Before any refund to the defendant at the conclusion of the case, the bond held by the court shall be applied according to the priority of payments per C.R.S. 18-1.3-204(2.5).⁵

DISCUSSION

The implementation of this recommendation will increase the collection of fees. The expansion of the practice described in this recommendation, in combination with implementing a statute that permits cash bond-to-the-court (see Recommendation L-7), has the potential to reduce violations and recidivism related to failure to pay fines, fees, costs, and restitution.

ACTION TO DATE 2008

Recommendation approved by the Commission.

ACTION TO DATE 2009

No action taken on this recommendation in 2009.

BARRIER

Insufficient support by key stakeholders to move forward with this recommendation during the FY 2009 legislative session

UPDATE 2010

During the 2010 legislative session, a bill was introduced (HB10-1215) that is related to the Commission's 2008 recommendation entitled **L-9 Bond Applied to Priority of Payments**. HB10-1215 (Concerning the use of cash bond deposits after the discharge of the bond to satisfy outstanding court-ordered debts) was signed into law at the end of the 2010 session. While HB10-1215 does not specifically establish any priority of payment for the use of the bond, it does mandate that a cash bond could be used by the court to satisfy fines, fees, and restitution. While this bill was in no way created by the Commission, it does indeed address an important issue raised by recommendation L-9.

⁵ This statute specifies the order of priority for offender fees.

2010 Proposition 102 – Criteria for Setting Bail and Type of Bond

Ballot Title Setting Board

Proposed Initiative 2009-2010 #921

The title as designated and fixed by the Board is as follows:

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

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado Revised Statutes requiring that only defendants arrested for a first offense, non violent misdemeanor may be recommended for release or actually released to a pretrial services program's supervision in lieu of a cash, property, or professional surety bond?

Hearing April 21, 2010:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 9:51a.m.