

# SHERIFF OF GARFIELD COUNTY

## LOU VALLARIO

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### GARFIELD COUNTY SHERIFF'S OFFICE POLICY / PROCEDURE DETENTIONS

#### **SUBJECT: RIGHT TO BAIL**

**EFFECTIVE DATE:** January 01, 2024

#### **POLICY:**

The Garfield County Sheriff's Office Detention staff shall insure that we are in compliance with CRS 16-4-202 Right to Bail.

#### **PURPOSE:**

The purpose of this policy is to make sure that Sheriffs across the state of Colorado are applying a uniformed practice regarding a Defendant's right to bail. In addition, Sheriffs are required to post this policy and its requirements making them available to the general public via the Sheriff's Office website. Also, notices of *Legal Rights Related to Posting a Money Bond* shall be posted in the jail and provided to the inmates.

#### **METHOD:**

The Garfield County Sheriff's Office shall comply with CRS 16-4-102. See below:

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

(1) Any person who is in custody, and for whom the court has not set bond and conditions of release pursuant to the applicable rule of criminal procedure, and who is not subject to the provisions of section 16-4-101 (5), has the right to a hearing to determine bond and conditions of release. A person in custody may also request a hearing so that bond and conditions of release can be set. Upon receiving the request, the judge shall notify the district attorney immediately of the arrested person's request, and the district attorney has the right to attend and advise the court of matters pertinent to the type of bond and conditions of release to be set. The judge shall also order the appropriate law enforcement agency having custody of the prisoner to bring him or her before the court forthwith, and the judge shall set bond and conditions of release if the offense for which the person was arrested is bailable. It is not a prerequisite to bail that a criminal charge of any kind has been filed.

**(2)(a)(I)** The arresting jurisdiction shall bring an in-custody arrestee before a court for bond setting as soon as practicable, but no later than forty-eight hours after an arrestee arrives at a jail or holding facility. A judge, magistrate, or bond hearing officer shall hold a hearing with an in-custody arrestee at which the court shall enter an individualized bond order as soon as practicable, but no later than forty-eight hours after an arrestee arrives at a jail or holding facility. Notwithstanding the requirement for bond setting within forty-eight hours, it is not a violation of this section if a bond hearing is not held within forty-eight hours when the delay is caused by an emergency that requires the court to close or circumstances in which the defendant refuses to attend court, is unable to attend court due to a debilitating physical ailment, or is unable to proceed due to drug or alcohol use or mental illness. Use of audiovisual conferencing technology is permissible to expedite bond setting hearings, including prior to extradition of the defendant from one county to another in the state of Colorado. When high-speed internet access is unavailable, making audiovisual conferencing impossible, the court may conduct the hearing telephonically.

**(II)** This subsection (2)(a) applies only to the initial bond setting by a judge.

**(III)** This subsection (2)(a) applies to an arrestee who was arrested on or after April 1, 2022.

**(b)(I)** A judge, judicial officer, or bond hearing officer shall not require a monetary bond to be paid in the defendant's name. Bond may be paid, at a minimum, by cash, money order, or cashier's check. If bond is paid by money order or cashier's check, the money order or cashier's check may be payable to the holding county. Before bond is posted, the sheriff shall provide the defendant and surety, if any, a copy of the notice described in subsection (2)(h)(I) of this section. When the bond is posted, the sheriff shall provide the defendant and surety, if any, a copy of the bond paperwork and information regarding the defendant's next court date. The individual processing the bond shall certify, in writing, that the payor received a copy of the bond paperwork, the notice described in subsection (2)(h)(I) of this section, and information regarding the defendant's next court date and shall place a copy of the certification in the defendant's file. Notwithstanding the provisions of this section, a sheriff may allow an individual to choose to stay in jail overnight after release when extenuating circumstances exist, including inclement weather, lack of transportation, or lack of shelter.

**(II)** By January 1, 2022, each jail shall establish a means to pay bond online without the need for the payor to go to the jail in person to pay bond.

**(c)** The custodian of a jail shall ensure the defendant, a surety on behalf of the defendant, or another third party on behalf of the defendant is not charged more than a ten-dollar bond processing fee.

**(d)** The custodian of a jail shall also ensure the defendant, a surety on behalf of the defendant, or another third party on behalf of the defendant is not charged any additional transaction fees including kiosk fees; except that the standard credit card processing fee that the credit card company charges may be charged when a credit card is used, or, when a third-party vendor provides defendants the option to pay monetary bond with a credit card, the defendant can be required to pay up to a three-and-one-half percent credit card payment processing fee.

**(e)** Unless extraordinary circumstances exist, the custodian of a jail shall release a defendant who is granted a personal recognizance bond as soon as practicable but no later than six hours after the defendant is physically present in the jail. Unless extraordinary circumstances exist, the custodian of a jail shall release a defendant who is granted a cash bond as soon as practicable but no later than six hours after bond is set, after the defendant is physically present in the jail, and after the defendant or surety notifies the jail that the defendant or surety is prepared to post bond. If the custodian fails to release the defendant within six hours, the custodian shall inform the defendant and any person posting bond on behalf of the defendant the reason for the delay and shall document the reason for the delay in the defendant's file. A supervisory condition of release does not serve as a legal basis to continue to detain the defendant; except that, if the defendant is ordered released upon condition of being subject to electronic monitoring, the defendant may be held up to as long as practicable but no longer than twenty-four hours after the defendant is physically present in the jail and the defendant's bond has been posted, if such delay is necessary to ensure the defendant is fitted with electronic monitoring and the court has authorized the defendant to be held until the electronic monitor is fitted. If the court orders electronic monitoring for the protection of a specific individual, and the defendant is ordered to have no contact with that specific individual, and the judge orders that the defendant not be released without electronic monitoring based on finding that the electronic monitoring is necessary for public safety, then the time limits regarding release of the defendant in this subsection (2)(e) do not apply. However, if a defendant is held more than twenty-four hours after posting bond awaiting electronic monitoring fitting, the sheriff shall bring the defendant to the court the next day the court is in session and explain the reason for the delay.

**(f)** A defendant who has posted bond must be released regardless of whether the defendant has paid any outstanding fee, cost, or surcharge, including bond processing fees, booking fees, pretrial supervision fees, or electronic monitoring supervision fees.

**(g)** For purposes of this section, "extraordinary circumstances" includes an emergency that renders staff unable to process bonds and release defendants, but it does not include a lack of staffing resources or routine administrative practices.

**(h)(I)(A)** Each sheriff shall post the following notice of rights on the sheriff's website and information about how to file a complaint about violations of subsections (2)(b) to (2)(g) of this section:

**Legal Rights Related to Posting Money Bond Pursuant to Section 16-4-102, Colorado Revised Statutes**

- 1. Bond fees, booking fees, and other fees or debts never need to be paid to secure a person's release on money bond.** A payor need only pay the bond amount in order to secure release.
- 2.** While never a basis to hold a defendant in jail, the following fees are chargeable as a debt to the defendant after release if the payor chooses not to pay the fees at the time of bonding: A \$10 bond fee and a maximum 3.5% credit card payment fee. No other bond-related fees may be charged at any time, including any kiosk fees or fees for payment by cash, check, or money order.
- 3.** Bond payments are to be made out to the holding county and are never to be made out in the name of the incarcerated person.
- 4. A sheriff must release a defendant within six hours after a personal recognizance bond is set and the defendant has returned to jail or within six hours after a cash bond has been set and the defendant has returned to jail and the defendant or surety notified the jail that bond is prepared to be posted,** unless extraordinary circumstances exist. In the event of a delay of more than six hours, a surety and the defendant have a right to know what, if any, extraordinary circumstance is causing the delay. Supervisory conditions of release do not justify a delay in release; except that a sheriff may hold a defendant for up to 24 hours if necessary to ensure a defendant is fitted with required electronic monitoring.
- 5.** Anyone who posts a money bond has the right to receive a copy of the bond paperwork, including documentation of the next upcoming court date.
- 6. A surety may never be asked to use posted bond money to pay a defendant's debts.** Only when defendants have posted their own money bond may they be asked if they would like to voluntarily relinquish bond money to pay their debts. Relinquishment of bond money by a defendant to pay a debt is never required and is entirely a voluntary choice by the defendant.
  - (B)** The notice described in this subsection (2)(h)(I) must include information about how to file a complaint about violations of these provisions.
  - (II)** The sheriff shall include the notice described in subsection (2)(h)(I) of this section in the inmate handbook. The notice must also be available at the bonding counter and provided to any individual, including a defendant, inquiring about posting bond.
    - (i)** Each sheriff shall post a notice both in the common area of the jail in a location clearly visible to the inmates and in the public portion of the jail where a person posts bond, clearly visible to a person posting bond, that contains the following information:
      - (I)** Bond fees, booking fees, and other fees or debts never need to be paid to secure a person's release on money bond. A payor need only pay the bond amount in order to secure release.
      - (II)** The sheriff shall release a defendant within six hours after a personal recognizance bond is set and the defendant has returned to jail or within six hours after a cash bond has been set and the defendant has returned to jail and the defendant or surety notified the jail that bond is prepared to be posted, unless extraordinary circumstances exist. However, a sheriff may hold a defendant for up to twenty-four hours if necessary to ensure a defendant is fitted with required electronic monitoring.
      - (III)** How to file a complaint about violations of subsections (2)(i)(I) and (2)(i)(II) of this section.
    - (j)(I)** Each sheriff shall create written policies to comply with this subsection (2) by October 1, 2021. The sheriff shall post the policies on the sheriff's website and distribute them to all staff. The sheriff shall train all staff who process bonds or interact with inmates on the policies.
    - (II)** Each sheriff shall review and update the sheriff's website, signage, paperwork, and forms related to bonding to reflect current law by October 1, 2021, and update the sheriff's website, signage, paperwork, and forms related to bonding as necessary thereafter.
    - (III)** Each sheriff shall file a certificate of compliance with this subsection (2), a copy of the written policies required by subsection (2)(j)(I) of this section, and the notices required by subsections (2)(h)(i)(A) and (2)(i) of this section with the division of criminal justice in the department of public safety, by October 1, 2021, and each October 1 thereafter. Copies of the policies and notices only have to be provided when updated. The sheriff shall use the certificate of compliance form developed by the division of criminal justice in the department of public safety pursuant to section 24-33.5-503 (1)(bb).

**LEGAL RIGHTS RELATED TO POSTING MONEY BOND**  
**PURSUANT TO SECTION 16-4-102, COLORADO REVISED STATUTES**

1. BOND FEES, BOOKING FEES, AND OTHER FEES OR DEBTS NEVER NEED TO BE PAID TO SECURE A PERSON'S RELEASE ON MONEY BOND. A PAYOR NEED ONLY PAY THE BOND AMOUNT IN ORDER TO SECURE RELEASE.

2. WHILE NEVER A BASIS TO HOLD A DEFENDANT IN JAIL, THE FOLLOWING FEES ARE CHARGEABLE AS A DEBT TO THE DEFENDANT AFTER RELEASE IF THE PAYOR CHOOSES NOT TO PAY THE FEES AT THE TIME OF BONDING: A \$10 BOND FEE AND A MAXIMUM 3.5% CREDIT CARD PAYMENT FEE. No OTHER BOND-RELATED FEES MAY BE CHARGED AT ANY TIME, INCLUDING ANY KIOSK FEES OR FEES FOR PAYMENT BY CASH, CHECK, OR MONEY ORDER.

3. BOND PAYMENTS ARE TO BE MADE OUT TO THE HOLDING COUNTY AND ARE NEVER TO BE MADE OUT IN THE NAME OF THE INCARCERATED PERSON.

4. A SHERIFF MUST RELEASE A DEFENDANT WITHIN SIX HOURS AFTER A PERSONAL RECOGNIZANCE BOND IS SET AND THE DEFENDANT HAS RETURNED TO JAIL OR WITHIN SIX HOURS AFTER A CASH BOND HAS BEEN SET AND THE DEFENDANT HAS RETURNED TO JAIL AND THE DEFENDANT OR SURETY NOTIFIED THE JAIL THAT BOND IS PREPARED TO BE POSTED, UNLESS EXTRAORDINARY CIRCUMSTANCES EXIST. IN THE EVENT OF A DELAY OF MORE THAN SIX HOURS, A SURETY AND THE DEFENDANT HAVE A RIGHT TO KNOW WHAT, IF ANY, EXTRAORDINARY CIRCUMSTANCE IS CAUSING THE DELAY. SUPERVISORY CONDITIONS OF RELEASE DO NOT JUSTIFY A DELAY IN RELEASE; EXCEPT THAT A SHERIFF MAY HOLD A DEFENDANT FOR UP TO 24 HOURS IF NECESSARY TO ENSURE A DEFENDANT IS FITTED WITH REQUIRED ELECTRONIC MONITORING.

5. ANYONE WHO POSTS A MONEY BOND HAS THE RIGHT TO RECEIVE A COPY OF THE BOND PAPERWORK, INCLUDING DOCUMENTATION OF THE NEXT UPCOMING COURT DATE.

6. A SURETY MAY NEVER BE ASKED TO USE POSTED BOND MONEY TO PAY A DEFENDANT'S DEBTS. ONLY WHEN DEFENDANTS HAVE POSTED THEIR OWN MONEY BOND MAY THEY BE ASKED IF THEY WOULD LIKE TO VOLUNTARILY RELINQUISH BOND MONEY TO PAY THEIR DEBTS. RELINQUISHMENT OF BOND MONEY BY A DEFENDANT TO PAY A DEBT IS NEVER REQUIRED AND IS ENTIRELY A VOLUNTARY CHOICE BY THE DEFENDANT.

\*TO FILE A COMPLAINT REGARDING A VIOLATION OF THE ABOVE, YOU MAY CONTACT THE PROFESSIONAL STANDARDS DIVISION BY CALLING 970-945-0453 DURING NORMAL BUSINESS HOURS. YOU MAY ALSO SEND AN EMAIL DETAILING THE SPECIFICS OF YOUR COMPLAINT TO [INFO@GARCOSHERIFF.COM](mailto:INFO@GARCOSHERIFF.COM).

**PAYING A BOND**

THERE ARE SEVERAL WAYS YOU MAY PAY A BOND FOR AN INMATE:

1. YOU MAY USE A LICENSED BONDSMAN AND PAY A FEE FOR THEIR SERVICES
2. YOU MAY PAY A BOND AT THIS FACILITY 24/7
3. YOU MAY PAY A BOND BY CONTACTING US 24/7 AT 970-945-1377 EXT.1033

\* Note: There may be other holds upon the inmate, which would prevent release.