

**First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 21-0193.02 Michael Dohr x4347

**SENATE BILL 21-062**

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**SENATE SPONSORSHIP**

**Lee,**

**HOUSE SPONSORSHIP**

**Benavidez,**

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**Senate Committees**  
Judiciary

**House Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING MEASURES TO REDUCE JAIL POPULATIONS.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

The bill gives a peace officer the authority to issue a summons and complaint for any offense committed in the officer's presence, or if not committed in the officer's presence, for any offense that the officer has probable cause to believe was committed and probable cause to believe was committed by the person charged, unless arrest is statutorily required or the offense is a crime of violence.

The bill prohibits a peace officer from arresting a person based solely on the alleged commission of a traffic offense; petty offense;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

municipal offense; misdemeanor offense; a class 4, 5, or 6 felony; or a level 3 or 4 drug felony unless:

- A custodial arrest is statutorily required;
- The officer is unable to sufficiently verify the individual's identity absent a custodial arrest;
- The person was convicted for a violation of section 42-4-1301, Colorado Revised Statutes, in the previous 12 months; or
- The offense is a felony or a victims' rights crime, the offense includes an element of illegal possession or use of firearm, the offense constitutes unlawful sexual behavior, or the offense is a violation a temporary or regular extreme risk protection order, a violation of a credible threat to a school, or a violation of eluding in a vehicle and:
  - The arresting officer records in the arrest documents a reasonable suspicion to conclude the person poses a threat to the safety of another, absent custodial arrest; or
  - The arresting officer records in the arrest documents a reasonable suspicion to conclude the person has indicated a clear unwillingness to cease and desist in criminal behavior, absent custodial arrest.

The bill prohibits a court from issuing a monetary bond for a misdemeanor offense; municipal offense; class 4, 5, or 6 felony; or level 3 or 4 drug felony unless the court finds the defendant will flee prosecution or threaten the safety of another and no other condition of release can reasonably mitigate the risk. The bill requires the court to issue a personal recognizance bond when the defendant fails to appear unless the defendant has failed to appear 3 or more times in the case. The bill requires the court to issue a personal recognizance bond in a failure to comply with conditions probation hearing unless it is based on a commission of a new crime.

The bill authorizes sheriffs to actively manage their jail populations in order to keep the population as low as possible while maintaining community safety, including the authority to establish jail admission standards that include offense-based admission standards that limit jail admissions.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2           **SECTION 1.** In Colorado Revised Statutes, **amend** 16-2-104 as  
3 follows:

4           **16-2-104. Issuance of summons and complaint.** (1) (a) ~~A~~

1 ~~summons and complaint may be issued by any peace officer for an~~  
2 ~~offense constituting a misdemeanor, or a petty offense committed in his~~  
3 ~~presence or, if not committed in his presence, which he has probable~~  
4 ~~cause to believe was committed and probable cause to believe was~~  
5 ~~committed by the person charged~~ A SUMMONS AND COMPLAINT MAY BE  
6 ISSUED BY ANY PEACE OFFICER FOR ANY OFFENSE COMMITTED IN THE  
7 OFFICER'S PRESENCE, OR IF NOT COMMITTED IN THE OFFICER'S PRESENCE,  
8 FOR ANY OFFENSE THAT THE OFFICER HAS PROBABLE CAUSE TO BELIEVE  
9 WAS COMMITTED AND PROBABLE CAUSE TO BELIEVE WAS COMMITTED BY  
10 THE PERSON CHARGED, UNLESS ARREST IS STATUTORILY REQUIRED OR THE  
11 OFFENSE IS A CRIME OF VIOLENCE, AS DEFINED IN SECTION 16-1-104 (8.5).

12 (b) A PEACE OFFICER SHALL NOT SUBJECT A PERSON TO A  
13 CUSTODIAL ARREST BASED SOLELY ON THE ALLEGED COMMISSION OF A  
14 TRAFFIC OFFENSE; PETTY OFFENSE; MUNICIPAL OFFENSE; MISDEMEANOR  
15 OFFENSE; A CLASS 4, 5, OR 6 FELONY; OR A LEVEL 3 OR 4 DRUG FELONY  
16 UNLESS:

17 (I) A CUSTODIAL ARREST IS STATUTORILY REQUIRED;

18 (II) THE OFFICER IS UNABLE TO SUFFICIENTLY VERIFY THE  
19 INDIVIDUAL'S IDENTITY ABSENT A CUSTODIAL ARREST;

20 (III) THE OFFICER HAS PROBABLE CAUSE TO BELIEVE THE PERSON  
21 VIOLATED SECTION 42-4-1301 AND PERSON WAS CONVICTED FOR A  
22 VIOLATION OF SECTION 42-4-1301 IN THE PREVIOUS TWELVE MONTHS; OR

23 (IV) THE OFFENSE IS A FELONY, A CRIME, AS DEFINED IN SECTION  
24 24-4.1-302 (1), THE OFFENSE INCLUDES AN ELEMENT OF ILLEGAL  
25 POSSESSION OR USE OF FIREARM, THE OFFENSE CONSTITUTES UNLAWFUL  
26 SEXUAL BEHAVIOR AS DEFINED IN SECTION 16-22-102 (9), OR THE OFFENSE  
27 IS A VIOLATION SECTION 13-14.5-111, SECTION 18-9-109 (6), OR SECTION

1 42-4-1413 AND:

2 (A) THE ARRESTING OFFICER RECORDS IN THE ARREST DOCUMENTS  
3 A REASONABLE SUSPICION TO CONCLUDE THE PERSON POSES A THREAT TO  
4 THE SAFETY OF ANOTHER, ABSENT CUSTODIAL ARREST; OR

5 (B) THE ARRESTING OFFICER RECORDS IN THE ARREST DOCUMENTS  
6 A REASONABLE SUSPICION TO CONCLUDE THE PERSON HAS INDICATED A  
7 CLEAR UNWILLINGNESS TO CEASE AND DESIST IN CRIMINAL BEHAVIOR,  
8 ABSENT CUSTODIAL ARREST.

9 (c) THIS SECTION CREATES OBLIGATIONS UPON ARRESTING  
10 OFFICERS. THIS SUBSECTION (1) DOES NOT REQUIRE A COURT OR A SHERIFF  
11 TO PERFORM A REVIEW TO ENSURE COMPLIANCE WITH THIS SECTION AS IT  
12 RELATES TO JAIL ADMISSIONS. THIS SUBSECTION (1) DOES NOT CREATE A  
13 PRIVATE RIGHT OF ACTION FOR VIOLATIONS OF THIS SUBSECTION OR  
14 PROVIDE A BASIS TO SEEK DISMISSAL OR SUPPRESSION OF EVIDENCE IN A  
15 CRIMINAL CASE.

16 (2) Except for penalty assessment notices, which ~~shall~~ MUST be  
17 handled according to the procedures set forth in section 16-2-201, a copy  
18 of a summons and complaint ~~so~~ issued ~~shall~~ PURSUANT TO THIS SECTION  
19 MUST be filed immediately with the county court before which appearance  
20 is required, and a second copy ~~shall~~ MUST be given to the district attorney  
21 or deputy district attorney for the county.

22 (3) (a) AS USED IN THIS SECTION, "CUSTODIAL ARREST" MEANS  
23 WHEN A PEACE OFFICER ARRESTS A PERSON AND TAKES THE PERSON INTO  
24 PHYSICAL CUSTODY FOR THE PURPOSE OF TRANSPORTING THE PERSON TO  
25 BE HELD IN A CITY, CITY AND COUNTY, OR COUNTY JAIL OR DETENTION  
26 FACILITY UNTIL SUCH TIME AS THE PERSON EITHER APPEARS BEFORE A  
27 COURT OR IS RELEASED ON BOND.

1 (b) "CUSTODIAL ARREST" DOES NOT INCLUDE:

2 (I) WHEN A PEACE OFFICER TRANSPORTS A PERSON TO A CITY, CITY  
3 AND COUNTY, OR COUNTY JAIL OR DETENTION FACILITY IN ORDER TO HAVE  
4 THE PERSON SUBMIT TO FINGERPRINTING, PHOTOGRAPHING, DNA TESTING,  
5 OR BREATH ALCOHOL TESTING PRIOR TO BEING RELEASED ON A SUMMONS  
6 AND COMPLAINT;

7 (II) WHEN A PEACE OFFICER TRANSPORTS A PERSON FOR ANY  
8 OTHER LAWFUL PURPOSE OR TO ANY OTHER FACILITY TO WHICH A PEACE  
9 OFFICER HAS STATUTORY OR COURT ORDERED AUTHORITY TO TRANSPORT  
10 SUCH AS A HOSPITAL OR BEHAVIORAL OR MENTAL HEALTH FACILITY,  
11 UNLESS THE PEACE OFFICER INTENDS TO HAVE THE PERSON TRANSPORTED  
12 TO BE HELD IN JAIL UPON DISCHARGE FROM SUCH FACILITY.

13 **SECTION 2.** In Colorado Revised Statutes, 16-4-113, **add** (3) as  
14 follows:

15 **16-4-113. Type of bond in certain cases.** (3) (a) EXCEPT AS  
16 PROVIDED FOR IN SUBSECTION (2) OF THIS SECTION, FOR A DEFENDANT  
17 CHARGED WITH A CLASS 4, 5, OR 6 FELONY; A LEVEL 3 OR 4 DRUG OFFENSE;  
18 A MISDEMEANOR; OR A MUNICIPAL OFFENSE, A COURT SHALL NOT IMPOSE  
19 A MONETARY CONDITION OF RELEASE UNLESS THE COURT FINDS ON THE  
20 RECORD THAT THERE IS A SUBSTANTIAL RISK THAT THE DEFENDANT WILL  
21 FLEE PROSECUTION OR THREATEN THE SAFETY OF ANOTHER PERSON AND  
22 NO OTHER CONDITION OF RELEASE CAN REASONABLY MITIGATE THE RISK.

23 (b) WHEN A DEFENDANT APPEARS BEFORE THE COURT BASED ON  
24 A FAILURE TO APPEAR WARRANT, THE COURT SHALL GRANT THE  
25 DEFENDANT A PERSONAL RECOGNIZANCE BOND UNLESS THE DEFENDANT  
26 HAS FAILED TO APPEAR THREE OR MORE TIMES IN THE CASE OR THE COURT  
27 FINDS ON THE RECORD THAT THE DEFENDANT IS LIKELY TO FLEE

1 PROSECUTION.

2 (c) (I) WHEN A PROBATIONER APPEARS BEFORE THE COURT ON A  
3 WARRANT FOR FAILURE TO COMPLY WITH CONDITIONS OF PROBATION FOR  
4 WHICH THE UNDERLYING BEHAVIOR IS NOT A CRIMINAL OFFENSE, THE  
5 COURT SHALL GRANT THE PROBATIONER A PERSONAL RECOGNIZANCE  
6 BOND.

7 (II) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3)(c)(I)  
8 OF THIS SECTION, A COURT MAY ISSUE A MONETARY BOND IF THE  
9 DEFENDANT HAS ALREADY HAD PROBATION REVOKED FOR FAILURE TO  
10 COMPLY IN THAT CASE. NOTHING IN THIS SUBSECTION (3) LIMITS A  
11 COURT'S AUTHORITY TO REVOKE PROBATION BASED ON FAILURE TO  
12 COMPLY PURSUANT TO SECTION 16-11-206.

13 **SECTION 3.** In Colorado Revised Statutes, **add** 30-10-528 as  
14 follows:

15 **30-10-528. Sheriff - jail population management.** THE GENERAL  
16 ASSEMBLY ENCOURAGES AND AUTHORIZES SHERIFFS TO ACTIVELY  
17 MANAGE THEIR JAIL POPULATIONS IN ORDER TO KEEP THE POPULATION AS  
18 LOW AS POSSIBLE WHILE MAINTAINING COMMUNITY SAFETY, INCLUDING  
19 THE AUTHORITY TO ESTABLISH JAIL ADMISSION STANDARDS THAT INCLUDE  
20 OFFENSE-BASED ADMISSION STANDARDS THAT LIMIT JAIL ADMISSIONS.

21 **SECTION 4.** In Colorado Revised Statutes, 16-5-206, **repeal**  
22 (1.5) as follows:

23 **16-5-206. Summons in lieu of warrant.** (1.5) ~~(a) Except in class~~  
24 ~~1, class 2, class 3, and class 4 felonies; in crimes described in section~~  
25 ~~24-4.1-302 (1), C.R.S.; and in unclassified felonies punishable by a~~  
26 ~~maximum penalty of more than ten years, a law enforcement officer may~~  
27 ~~issue a summons commanding the appearance of the defendant in lieu of~~

1 a warrant for his or her arrest based on probable cause if:

2 (I) ~~The local district attorney consents to such procedure and has~~  
3 ~~developed and approved criteria for the issuance of such a summons~~  
4 ~~pursuant to this subsection (1.5);~~

5 (II) ~~There is a reasonable likelihood that the defendant will~~  
6 ~~appear;~~

7 (III) ~~The defendant has had no felony arrests during the preceding~~  
8 ~~five years;~~

9 (IV) ~~There is no allegation that the defendant used a deadly~~  
10 ~~weapon as defined in section 18-1-901 (3)(e), C.R.S., in the commission~~  
11 ~~of the crime; and~~

12 (V) ~~There are no outstanding warrants for the defendant's arrest.~~

13 (b) ~~No later than ten days after a law enforcement officer issues~~  
14 ~~a summons pursuant to this subsection (1.5), he or she shall deliver a copy~~  
15 ~~to the court and to the office of the district attorney where jurisdiction~~  
16 ~~lies.~~

17 (c) ~~When the procedure described in this subsection (1.5) is used,~~  
18 ~~an information or complaint may be filed in open court on the date~~  
19 ~~specified in the summons.~~

20 **SECTION 5. Act subject to petition - effective date.** This act  
21 takes effect January 1, 2022; except that, if a referendum petition is filed  
22 pursuant to section 1 (3) of article V of the state constitution against this  
23 act or an item, section, or part of this act within the ninety-day period  
24 after final adjournment of the general assembly, then the act, item,  
25 section, or part will not take effect unless approved by the people at the

1 general election to be held in November 2022 and, in such case, will take  
2 effect on the date of the official declaration of the vote thereon by the  
3 governor.