

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 21-1019.01 Michael Dohr x4347

SENATE BILL 21-273

SENATE SPONSORSHIP

Lee and Moreno, Buckner, Coleman, Gonzales, Rodriguez, Fenberg, Jaquez Lewis,
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A BILL FOR AN ACT

101 **CONCERNING MEASURES TO INCREASE PUBLIC SAFETY BY MINIMIZING**
102 **CUSTODIAL RESPONSES TO LOW-LEVEL OFFENSES, AND, IN**
103 **CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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 creates the community response to low-level offenses working group in the department of public safety to study and propose statewide policy and legislative initiatives to safely increase community response in lieu of law enforcement engagement for lower-level offenses and calls for service when there is no criminal conduct. The working

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.

SENATE
3rd Reading Unamended
May 27, 2021

SENATE
Amended 2nd Reading
May 26, 2021

group shall report its findings to the judiciary committees of the house of representatives and the senate, or any successor committees, by the February 1, 2022.

The bill prohibits a peace officer from arresting a person based solely on the alleged commission of a traffic offense, petty offense, drug petty offense, municipal offense, drug misdemeanor offense, or misdemeanor offense, unless:

- Custodial arrest is statutorily required;
- The offense is a victim rights crime; the offense includes an element of illegal possession or use of a firearm; or the offense constitutes unlawful sexual behavior, failure to register as a sex offender, or the offense is a violation of 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; or
- The officer is unable to sufficiently verify the individual's identity absent a 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 a 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 failed to appear when a witness was subpoenaed or a civilian witness was on call;
- The defendant intentionally failed to appear for the purpose of interfering with or deterring victim or witness participation in the case; or
- The defendant has failed to appear 2 or more times in the case.

The bill requires the court to issue a personal recognizance bond in a failure to comply with a probation conditions case that is not based on a criminal offense, unless:

- The violation was for a failure to comply with any court-ordered treatment related to a sex offense or domestic violence;
- The defendant has already had probation revoked for failure to comply in the case; or
- The court finds the defendant is likely to flee prosecution.

The bill permits appellate review of a court's bail or bond order by either the defendant or the prosecution after a reconsideration hearing, denial of a reconsideration of bond conditions, or order for bail after conviction.

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.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) Custodial arrest and pre-trial incarceration have too often
5 become the default option for law enforcement, despite the United States
6 Supreme Court's edict that has cautioned: "In our society liberty is the
7 norm, and detention prior to trial is the carefully limited exception."
8 *United States v. Salerno*, 481 U.S. 739, 755 (1987);

9 (b) More than half of arrests in Colorado are for low-level
10 nonviolent offenses that do not pose a present threat to the safety of
11 others;

12 (c) Arrests for low-level offenses disproportionately involve
13 people of color. In Colorado, Black people are arrested at a rate eight
14 times higher than White people, are arrested for drug possession at a rate
15 twelve times higher than White people, and, although Black people make
16 up less than 5% of the population in Colorado, they represent about 15%
17 of people in jail.

18 (d) Arrests for low-level offenses too often escalate into violent
19 confrontations between police and community members with tragic
20 outcomes; indeed, the majority of law enforcement killings in Colorado
21 since 2017 involved incidents that began in response to an alleged
22 low-level offense, traffic violation, mental health call, or situation where
23 no crime was alleged, including those of Michael Marshall, Marvin
24 Booker, Elijah McClain, Jeffrey Melvin Jr., Jaime Ceballos, and Jack

1 Jacquez. Black people in Colorado have been killed at a rate four times
2 higher per population than White people since 2013, and Latino people
3 have been killed at twice the rate of White people.

4 (e) Furthermore, Colorado's local jail population has grown over
5 800% since the 1970s, mostly due to an increase in pre-trial confinement
6 of unconvicted people who remain incarcerated because they cannot
7 afford cash bond;

8 (f) Even short pretrial jail stays are destabilizing to already
9 vulnerable populations by causing loss of employment, housing, and
10 family connections; pretrial detention also increases the likelihood of
11 pleading guilty to get out of jail;

12 (g) Jails and prisons have become the largest in-patient mental
13 health facilities in Colorado, despite the fact that jail staff lack the
14 expertise or resources to address these societal problems, and Colorado
15 ranks eighth among states with the highest number of jail suicides;

16 (h) Law enforcement resources are limited and best focused on
17 arrests of individuals who are accused of more serious crimes and are
18 threats to public safety; and

19 (i) Community response programs nationwide and in Colorado
20 involving mental health professionals and social workers as crisis
21 responders have shown promising results by providing social support
22 rather than a law enforcement response to calls for service related to
23 lower-level offenses.

24 (2) Therefore, the general assembly declares that it is the public
25 policy of the state of Colorado to:

26 (a) Encourage the use of summonses and tickets rather than
27 custodial arrests for low-level offenses in order to increase public safety,

1 reduce the prospect of violence, and improve public trust of law
2 enforcement;

3 (b) Promote liberty and equal justice under law by increasing the
4 use of personal recognizance bonds and expedited appeals of their denial;
5 and

6 (c) Study alternatives to law enforcement responses, custodial
7 arrests, and jail for low-level offenses and mental health crises, including
8 community response models and diversion programs.

9

10 **SECTION 2.** In Colorado Revised Statutes, 16-5-206, **add** (1.7)
11 as follows:

12 **16-5-206. Summons in lieu of warrant or arrest - definitions.**

13 (1.7) (a) A PEACE OFFICER MAY ISSUE A SUMMONS AND SHALL NOT
14 SUBJECT A PERSON TO A JAIL-ELIGIBLE ARREST BASED ON PROBABLE
15 CAUSE TO BELIEVE THE A PERSON COMMITTED A TRAFFIC OFFENSE, PETTY
16 OFFENSE, DRUG PETTY OFFENSE, MUNICIPAL OFFENSE, DRUG
17 MISDEMEANOR, OR A MISDEMEANOR OFFENSE, UNLESS:

18 (I) THE ALLEGED OFFENSE IS:

19 (A) ONE FOR WHICH ARREST IS STATUTORILY REQUIRED;

20 (B) A VICTIM RIGHTS ACT CRIME, AS DEFINED IN SECTION
21 24-4.1-302 (1);

22 (C) DRIVING UNDER THE INFLUENCE, AS DEFINED IN SECTION
23 42-4-1301;

24 (D) AN OFFENSE THAT INCLUDES AN ELEMENT OF ILLEGAL
25 POSSESSION OR USE OF A DEADLY WEAPON;

26 (E) AN OFFENSE THAT CONSTITUTES UNLAWFUL SEXUAL BEHAVIOR
27 AS DEFINED IN SECTION 16-22-102 (9) OR FAILURE TO REGISTER AS A SEX

1 OFFENDER IN VIOLATION OF SECTION 18-3-412.5; OR

2 (F) A VIOLATION OF SECTION 13-14.5-111, 18-9-109 (6), OR
3 42-4-1413 OR MOTOR VEHICLE THEFT IN VIOLATION OF SECTION 18-4-409;

4 OR

5 (II) THE OFFICER IS UNABLE TO SUFFICIENTLY VERIFY AN
6 INDIVIDUAL'S IDENTITY AFTER EXHAUSTING ALL REASONABLY AVAILABLE
7 MEANS TO DO SO.

8 (b) NOTHING IN THIS SUBSECTION (1.7) LIMITS A PEACE OFFICER'S
9 AUTHORITY TO EXECUTE AN ARREST WARRANT, INCLUDING FOR FAILURE
10 TO APPEAR.

11 (c) THIS SUBSECTION (1.7) CREATES AN OBLIGATION UPON AN
12 ARRESTING OFFICER AND DOES NOT REQUIRE A COURT OR A SHERIFF TO
13 PERFORM A REVIEW TO ENSURE COMPLIANCE WITH THIS SECTION AS IT
14 RELATES TO JAIL ADMISSIONS. THIS SUBSECTION (1.7) DOES NOT CREATE
15 A PRIVATE RIGHT OF ACTION FOR VIOLATIONS OF THIS SUBSECTION (1.7)
16 NOR PROVIDE A BASIS TO SEEK DISMISSAL OR SUPPRESSION OF EVIDENCE
17 IN A CRIMINAL CASE.

18 (d) AS USED IN THIS SUBSECTION (1.7):

19 (I) "DEADLY WEAPON" MEANS A FIREARM, LOADED OR UNLOADED;
20 SIMULATED FIREARM; KNIFE; OR BLUDGEON.

21 (II) "JAIL-ELIGIBLE ARREST" MEANS WHEN A PEACE OFFICER
22 ARRESTS A PERSON AND TAKES THE PERSON INTO PHYSICAL CUSTODY FOR
23 THE PURPOSE OF TRANSPORTING THE PERSON TO BE HELD IN A CITY, CITY
24 AND COUNTY, OR COUNTY JAIL OR DETENTION FACILITY, UNTIL SUCH TIME
25 AS THE PERSON EITHER APPEARS BEFORE A COURT OR IS RELEASED ON
26 BOND. "JAIL-ELIGIBLE ARREST" DOES NOT INCLUDE:

27 (A) WHEN A PEACE OFFICER TRANSPORTS A PERSON TO A CITY,

1 CITY AND COUNTY, OR COUNTY JAIL OR DETENTION FACILITY IN ORDER TO
2 HAVE THE PERSON SUBMIT TO FINGERPRINTING, PHOTOGRAPHING, DNA
3 TESTING, OR TESTING OF BLOOD, BREATH, SALIVA, OR URINE PRIOR TO
4 BEING RELEASED ON A SUMMONS AND COMPLAINT; OR

5 (B) WHEN A PEACE OFFICER TRANSPORTS A PERSON FOR ANY
6 OTHER LAWFUL PURPOSE OR TO ANY OTHER FACILITY TO WHICH A PEACE
7 OFFICER HAS AUTHORITY TO TRANSPORT, SUCH AS A HOSPITAL,
8 DETOXIFICATION FACILITY, OR BEHAVIORAL OR MENTAL HEALTH FACILITY,
9 UNLESS THE PEACE OFFICER INTENDS TO HAVE THE PERSON HELD IN JAIL
10 UPON DISCHARGE FROM SUCH FACILITY.

11 (e) THE SHORT TITLE OF THIS SUBSECTION (1.7) IS THE "MICHAEL
12 MARSHALL JUSTICE ACT".

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

15 **16-4-113. Type of bond in certain cases - definition.**

16 (3) (a) EXCEPT AS PROVIDED FOR IN SUBSECTION (2) OF THIS SECTION, A
17 COURT SHALL NOT IMPOSE A MONETARY CONDITION OF RELEASE UNLESS
18 THE COURT FINDS ON THE RECORD THAT THERE IS A SUBSTANTIAL RISK
19 THAT THE DEFENDANT WILL FLEE PROSECUTION OR THREATEN THE SAFETY
20 OF ANY OTHER PERSON OR PERSONS IN THE COMMUNITY, WHETHER KNOWN
21 OR NOT, _____ AND NO OTHER CONDITION OF RELEASE CAN REASONABLY
22 MITIGATE THE RISK; EXCEPT THAT THIS SUBSECTION (3)(a) DOES NOT LIMIT
23 A COURT'S AUTHORITY TO IMPOSE A MONETARY CONDITION OF RELEASE
24 FOR AN ALLEGED CLASS 1, 2, OR 3 FELONY.

25 (b) (I) IN ORDER TO AVOID PRETRIAL DETENTION ON FAILURE TO
26 APPEAR IN COURT WHEN THE FAILURE TO APPEAR DID NOT HARM VICTIMS
27 OR WITNESSES, THE COURT SHALL GRANT A DEFENDANT A PERSONAL

1 RECOGNIZANCE BOND WHEN A DEFENDANT APPEARS BEFORE THE COURT
2 ON A WARRANT FOR FAILURE TO APPEAR, UNLESS:

3 (A) THE DEFENDANT FAILED TO APPEAR FOR A PROCEEDING FOR
4 WHICH A WITNESS WAS SUBPOENAED AND APPEARED OR FOR WHICH A
5 CIVILIAN WITNESS WAS PLACED ON CALL BY THE PROSECUTION;

6 (B) THE DEFENDANT INTENTIONALLY FAILED TO APPEAR FOR THE
7 PURPOSE OF INTERFERING WITH OR DETERRING VICTIM OR WITNESS
8 PARTICIPATION IN THE CASE;

9 (C) THE DEFENDANT PREVIOUSLY FAILED TO APPEAR IN THE CASE;

10 OR

11 (D) THE COURT FINDS THE DEFENDANT IS LIKELY TO FLEE
12 PROSECUTION.

13 (II) THE COURT MAY IMPOSE A MONETARY BOND IN THE
14 CIRCUMSTANCES DESCRIBED IN SUBSECTIONS (3)(b)(I)(A) TO (3)(b)(I)(D)
15 OF THIS SECTION WHEN THE COURT FINDS NO OTHER CONDITIONS OF
16 RELEASE CAN REASONABLY MITIGATE THE RISK OF FUTURE FAILURE TO
17 APPEAR.

18 (c) (I) WHEN A PROBATIONER APPEARS BEFORE THE COURT ON A
19 WARRANT FOR FAILURE TO COMPLY WITH CONDITIONS OF PROBATION FOR
20 WHICH THE UNDERLYING BEHAVIOR IS NOT A CRIMINAL OFFENSE, THE
21 COURT SHALL GRANT THE PROBATIONER A PERSONAL RECOGNIZANCE
22 BOND, UNLESS:

23 (A) THE VIOLATION WAS A FAILURE TO COMPLY WITH ANY COURT-
24 ORDERED TREATMENT RELATED TO A SEX OFFENSE OR A CRIME OF
25 DOMESTIC VIOLENCE, AND THE COURT FINDS ON THE RECORD THAT THE
26 FAILURE TO COMPLY POSES A SUBSTANTIAL RISK TO THE SAFETY OF ANY
27 OTHER PERSON OR PERSONS IN THE COMMUNITY, WHETHER KNOWN OR

1 NOT, == AND WAS NOT BASED SOLELY ON AN INABILITY TO PAY;

2 (B) THE DEFENDANT PREVIOUSLY HAD PROBATION REVOKED FOR
3 FAILURE TO COMPLY IN THE CASE; OR

4 (C) THE COURT FINDS A DEFENDANT IS LIKELY TO FLEE
5 PROSECUTION.

6 (II) NOTHING IN THIS SUBSECTION (3) LIMITS A COURT'S
7 AUTHORITY TO REVOKE PROBATION BASED ON FAILURE TO COMPLY
8 PURSUANT TO SECTION 16-11-206.

9 (d) NOTWITHSTANDING THIS SUBSECTION (3), THIS SECTION DOES
10 NOT PROHIBIT THE RELEASE OF A PERSON PURSUANT TO LOCAL PRETRIAL
11 RELEASE POLICIES THAT REQUIRE PAYMENT OF A MONETARY CONDITION
12 OF RELEASE PRIOR TO AN INDIVIDUALIZED DECISION BY A JUDGE, A
13 PRETRIAL OFFICER, A BONDING AND RELEASE COMMISSIONER, OR ANY
14 OTHER JUDICIAL OFFICER.

15 (e) THE SHORT TITLE OF THIS SUBSECTION (3) IS THE "MARVIN
16 BOOKER JUSTICE ACT".

17 (4) AS USED IN THIS SECTION, "FLEE PROSECUTION" MEANS
18 PLANNING OR ATTEMPTING TO INTENTIONALLY EVADE PROSECUTION BY
19 CONCEALING ONESELF. SIMPLE PAST NONAPPEARANCE IN COURT ALONE IS
20 NOT EVIDENCE OF FUTURE INTENT TO FLEE PROSECUTION. CITIZENSHIP
21 STATUS ALONE IS NOT EVIDENCE OF FUTURE INTENT TO FLEE
22 PROSECUTION.

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25 **SECTION 4.** In Colorado Revised Statutes, **add 30-10-528** as
26 follows:

27 **30-10-528. Sheriff - jail population management.** THE GENERAL

1 ASSEMBLY ENCOURAGES AND AUTHORIZES SHERIFFS TO ACTIVELY
2 MANAGE THEIR JAIL POPULATIONS IN ORDER TO KEEP THE POPULATION AS
3 LOW AS POSSIBLE WHILE MAINTAINING COMMUNITY SAFETY, INCLUDING
4 THE AUTHORITY TO ESTABLISH JAIL ADMISSION STANDARDS THAT INCLUDE
5 OFFENSE-BASED ADMISSION STANDARDS THAT LIMIT JAIL ADMISSIONS.

6 **SECTION 5.** In Colorado Revised Statutes, **amend** 16-2-104 as
7 follows:

8 **16-2-104. Issuance of summons and complaint.** EXCEPT WHEN
9 REQUIRED BY SECTION 16-5-206, a summons and complaint may be issued
10 by any peace officer for an offense constituting a misdemeanor, or a petty
11 offense committed in ~~his~~ THE OFFICER'S presence or, if not committed in
12 ~~his~~ THE OFFICER'S presence, which ~~he~~ THE OFFICER has probable cause to
13 believe was committed and probable cause to believe was committed by
14 the person charged. Except for penalty assessment notices, which shall be
15 handled according to the procedures set forth in section 16-2-201, a copy
16 of a summons and complaint so issued shall be filed immediately with the
17 county court before which appearance is required, and a second copy
18 shall be given to the district attorney or deputy district attorney for the
19 county.

20 **SECTION 6. Appropriation.** (1) For the 2021-22 state fiscal
21 year, \$24,436 is appropriated to the judicial department for use by trial
22 courts. This appropriation is from the general fund and is based on the
23 assumption that the department will require an additional 0.3 FTE. To
24 implement this act, the department may use this appropriation for trial
25 court programs.

26 (2) For the 2021-22 state fiscal year, \$50,375 is appropriated to
27 the department of public safety for use by the division of criminal justice.

1 This appropriation is from the general fund. To implement this act, the
2 department may use this appropriation for DCJ administrative services.

3 **SECTION 7. Act subject to petition - effective date.** This act
4 takes effect January 1, 2022; except that sections 6 and 7 of this act take
5 effect at 12:01 a.m. on the day following the expiration of the ninety-day
6 period after final adjournment of the general assembly; except that, if a
7 referendum petition is filed pursuant to section 1 (3) of article V of the
8 state constitution against this act or an item, section, or part of this act
9 within the ninety-day period after final adjournment of the general
10 assembly, then the act, item, section, or part will not take effect unless
11 approved by the people at the general election to be held in November
12 2022 and, in such case, will take effect on the date of the official
13 declaration of the vote thereon by the governor.