

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

INTRODUCED

LLS NO. 23-0771.01 Michael Dohr x4347

HOUSE BILL 23-1169

HOUSE SPONSORSHIP

Bacon,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A NON-ARREST RESPONSE BY LAW ENFORCEMENT FOR**
102 **CERTAIN LOW-LEVEL OFFENSES.**

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 prohibits a peace officer from arresting a person based solely on the alleged commission of a petty offense, except for petty theft, a drug petty offense, a class 2 traffic misdemeanor or comparable municipal offense, and all municipal offenses for which there is no comparable state misdemeanor offense, unless the location of the person is unknown and the issuance of an arrest warrant is necessary in order to

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

subject the person to the jurisdiction of the court.

The bill does not limit a peace officer's authority to arrest a person for an alleged offense:

- For which custodial arrest is statutorily required;
- That is a victim rights act crime;
- For a driving under the influence or a driving while impaired offense or a municipal offense with substantially similar elements;
- That is a traffic offense involving death or bodily injury or a municipal offense with substantially similar elements;
- That is eluding or attempting to elude a police officer or a municipal offense with substantially similar elements; or
- That is operating a vehicle after circumventing an interlock device or a municipal offense with substantially similar elements.

The bill does not limit a peace officer's authority to execute an arrest warrant or require a court or sheriff as a matter of jail administration to verify compliance with the bill.

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) The general assembly will improve public safety by addressing
5 the root causes of crime;

6 (b) The commission and resulting custodial arrest of low-level
7 offenses, commonly tied to behavioral health, substance use, and
8 homelessness issues, which are often exacerbated by jail, are most
9 effectively addressed by alternate-responder models or diversionary
10 community supports;

11 (c) Public safety is served by responding to low-level offenses
12 with increased services rather than custodial arrest because
13 non-prosecution of low-level offenses has been shown to reduce
14 reoffending, or recidivism, for these populations;

15 (d) Addressing low-level offenses by issuing a summons in lieu

1 of arrest and thereby reducing the reliance on jailing for the lowest level
2 of offenses serves the interest of improving public safety;

3 (e) Alternate response, co-response, and diversion opportunities
4 are the most effective and preferred response to low-level offenses tied
5 to behavioral health, substance use, and homelessness;

6 (f) Addressing low-level offenses by issuing a summons in lieu of
7 arrest, as well as providing diversionary health and housing tactics, is a
8 cost-effective approach because the financial costs of arresting and jailing
9 people are rising and the risks of harm to those arrested and jailed for
10 low-level offenses are psychologically costly. The direct costs associated
11 with jailing someone who needs mental health medications can reach
12 more than \$175 a day per person in some jurisdictions.

13 (g) A person jailed for a low-level offense can lose life-altering
14 resources such as medicaid, housing, employment, or academic
15 opportunities, and those losses accrue indirect long-term costs to the
16 community;

17 (h) Further, of the lives lost during incidents with law
18 enforcement, over half involved incidents that began in response to an
19 alleged low-level offense, mental health call, or a situation in which no
20 crime was alleged, and these deaths disproportionately affect people of
21 color;

22 (i) The commission on criminal and juvenile justice represents a
23 collaborative bipartisan body of criminal legal and law enforcement
24 experts and recommends the use of summons in lieu of warrant or arrest
25 for low-level offenses;

26 (j) The behavioral health transformational task force found in
27 January 2022 that "in Colorado, a person with serious mental illness is

1 more likely to be in jail than in a care facility, resulting in jails and
2 prisons acting as the biggest providers of mental health care in our state".
3 Resources can be better allocated to allow for behavioral health
4 professionals and others trained in intervention to respond to these
5 individuals rather than law enforcement personnel.

6 (k) The affordable housing transformational task force cited a
7 2021 Urban Institute study showing it costs on average \$20,000 a year to
8 house a person who is experiencing homelessness, as compared to the
9 \$30,000 to \$50,000 cost to leave that person unhoused and using
10 emergency services like jails;

11 (l) The state of Colorado is preparing to make historic investments
12 in co-responder strategies, pre-arrest and pre-trial programs, and health
13 and housing supports for cities, counties, and municipalities to support
14 criminal justice diversion systems as an alternative intervention for
15 low-level offenses; and

16 (m) Limited law enforcement resources should be preserved for
17 severe crimes deserving of law enforcement's skills and training, not for
18 low-level offenses driven by poverty or mental health or substance use
19 disorders.

20 (2) Therefore, the general assembly determines that it is necessary
21 to require a summons in lieu of arrest for low-level offenses.

22 **SECTION 2.** In Colorado Revised Statutes, **repeal and reenact,**
23 **with amendments,** 16-5-206 as follows:

24 **16-5-206. Summons in lieu of warrant or arrest - exceptions**
25 **- presumptions - short title.** (1) A SUMMONS IN LIEU OF ARREST MUST
26 BE ISSUED FOR ALL PETTY OFFENSES, EXCEPT FOR THEFT IN VIOLATION OF
27 SECTION 18-4-401 (2)(b); ALL DRUG PETTY OFFENSES; ALL CLASS 2

1 MISDEMEANOR TRAFFIC OFFENSES; AND ANY COMPARABLE MUNICIPAL
2 OFFENSES AND ALL MUNICIPAL OFFENSES FOR WHICH THERE IS NO
3 COMPARABLE STATE MISDEMEANOR OFFENSE, UNLESS THE LOCATION OF
4 THE PERSON IS UNKNOWN AND THE ISSUANCE OF AN ARREST WARRANT IS
5 NECESSARY IN ORDER TO SUBJECT THE PERSON TO THE JURISDICTION OF
6 THE COURT.

7 (2) NOTHING IN SUBSECTION (1) OF THIS SECTION LIMITS A PEACE
8 OFFICER'S AUTHORITY TO ARREST A PERSON FOR AN ALLEGED OFFENSE:

9 (a) FOR WHICH ARREST IS STATUTORILY REQUIRED, INCLUDING A
10 CRIME ALLEGING DOMESTIC VIOLENCE;

11 (b) THAT IS A VICTIM RIGHTS ACT CRIME, AS DEFINED IN SECTION
12 24-4.1-302 (1);

13 (c) FOR A DRIVING UNDER THE INFLUENCE OR A DRIVING WHILE
14 IMPAIRED OFFENSE AS DESCRIBED IN SECTION 42-4-1301, OR A MUNICIPAL
15 OFFENSE WITH SUBSTANTIALLY SIMILAR ELEMENTS;

16 (d) THAT IS A TRAFFIC OFFENSE INVOLVING DEATH OR BODILY
17 INJURY OR A MUNICIPAL OFFENSE WITH SUBSTANTIALLY SIMILAR
18 ELEMENTS;

19 (e) THAT IS ELUDING OR ATTEMPTING TO ELUDE A POLICE OFFICER
20 AS DESCRIBED IN SECTION 42-4-1413, OR A MUNICIPAL OFFENSE WITH
21 SUBSTANTIALLY SIMILAR ELEMENTS; OR

22 (f) THAT IS OPERATING A VEHICLE AFTER CIRCUMVENTING AN
23 INTERLOCK DEVICE AS DESCRIBED IN SECTION 42-2-132.5 (10), OR A
24 MUNICIPAL OFFENSE WITH SUBSTANTIALLY SIMILAR ELEMENTS.

25 (3) NOTHING IN SUBSECTION (1) OF THIS SECTION LIMITS A PEACE
26 OFFICER'S AUTHORITY TO EXECUTE AN ARREST WARRANT, INCLUDING A
27 WARRANT FOR FAILURE TO APPEAR.

1 (4) SUBSECTION (1) OF THIS SECTION CREATES OBLIGATIONS UPON
2 AN ARRESTING PEACE OFFICER BUT DOES NOT REQUIRE A COURT OR
3 SHERIFF, AS IT RELATES TO JAIL ADMINISTRATION, TO PERFORM A REVIEW
4 TO ENSURE COMPLIANCE WITH THIS SECTION.

5 (5) A LAW ENFORCEMENT AGENCY THAT SERVES A COMMUNITY
6 THAT HAS ALTERNATE RESPONSE, CO-RESPONSE, OR DIVERSION
7 OPPORTUNITIES FOR LOW-LEVEL OFFENSES RELATED TO BEHAVIORAL
8 HEALTH, SUBSTANCE USE, OR HOMELESSNESS IS STRONGLY ENCOURAGED
9 TO COLLABORATE TO THE GREATEST EXTENT POSSIBLE WITH THOSE
10 PROGRAMS TO INCREASE THEIR USAGE, ALLOWING LIMITED LAW
11 ENFORCEMENT RESOURCES TO BE USED FOR MORE SERIOUS OFFENSES.

12 (6) THIS SECTION IS KNOWN AS AND MAY BE CITED AS THE
13 "MICHAEL MARSHALL JUSTICE ACT".

14 **SECTION 3. Act subject to petition - effective date.** This act
15 takes effect at 12:01 a.m. on the day following the expiration of the
16 ninety-day period after final adjournment of the general assembly; except
17 that, if a referendum petition is filed pursuant to section 1 (3) of article V
18 of the state constitution against this act or an item, section, or part of this
19 act within such period, then the act, item, section, or part will not take
20 effect unless approved by the people at the general election to be held in
21 November 2024 and, in such case, will take effect on the date of the
22 official declaration of the vote thereon by the governor.