

**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

HOUSE SPONSORSHIP

Benavidez and Bacon,

Senate Committees

Judiciary
Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES TO INCREASE PUBLIC SAFETY BY MINIMIZING**
102 **CUSTODIAL RESPONSES TO 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 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 group shall report its findings to the judiciary committees of the house of

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.

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
25 Jacquez. Black people in Colorado have been killed at a rate four times

1 higher per population than White people since 2013, and Latino people
2 have been killed at twice the rate of White people.

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

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

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

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

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

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

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

1 enforcement;

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

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

8 **SECTION 2.** In Colorado Revised Statutes, **add** 24-33.5-117 as
9 follows:

10 **24-33.5-117. Community response to low-level offenses**
11 **working group - report.** (1) (a) THE EXECUTIVE DIRECTOR OF THE
12 DEPARTMENT OF PUBLIC SAFETY SHALL FORM A WORKING GROUP TO
13 STUDY AND PROPOSE STATEWIDE POLICY AND LEGISLATIVE INITIATIVES TO
14 SAFELY INCREASE COMMUNITY RESPONSE IN LIEU OF LAW ENFORCEMENT
15 ENGAGEMENT FOR LOWER-LEVEL OFFENSES AND CALLS FOR SERVICE WHEN
16 CRIMINAL CONDUCT IS NOT ALLEGED.

17 (b) AT A MINIMUM, THE WORKING GROUP MUST INCLUDE:

18 (I) A REPRESENTATIVE FROM:

19 (A) THE COLORADO DISTRICT ATTORNEYS' COUNCIL;

20 (B) AN ORGANIZATION REPRESENTING THE CHIEFS OF POLICE;

21 (C) AN ORGANIZATION REPRESENTING THE COUNTY SHERIFFS OF
22 COLORADO;

23 (D) THE OFFICE OF THE STATE PUBLIC DEFENDER;

24 (E) A NONPROFIT ORGANIZATION THAT PROVIDES DIRECT SERVICES
25 TO CRIME SURVIVORS;

26 (F) A NONPROFIT ORGANIZATION THAT ADVOCATES ON BEHALF OF
27 PEOPLE WITH MENTAL AND BEHAVIORAL HEALTH DISORDERS;

1 (G) A NONPROFIT ORGANIZATION THAT ADVOCATES ON BEHALF OF
2 PEOPLE EXPERIENCING HOMELESSNESS;

3 (H) A NONPROFIT ORGANIZATION THAT ADVOCATES FOR
4 INCREASING COMMUNITY RESPONSES IN LIEU OF LAW ENFORCEMENT; AND

5 (I) A NONPROFIT ORGANIZATION THAT ADVOCATES FOR INCREASED
6 RACIAL JUSTICE IN THE CRIMINAL JUSTICE SYSTEM; AND

7 (II) AN INDIVIDUAL WHO HAS BEEN OR IS THE IMMEDIATE FAMILY
8 MEMBER OF SOMEONE WHO HAS BEEN ARRESTED IN COLORADO FOR A
9 LOWER-LEVEL OFFENSE.

10 (c) THE WORKING GROUP SHALL, AT A MINIMUM, STUDY
11 COMMUNITY RESPONSE OPTIONS FOR WELFARE CHECKS, MENTAL AND
12 BEHAVIORAL HEALTH CRISES, HOMELESSNESS, SUBSTANCE ABUSE, TRAFFIC
13 OFFENSES, MUNICIPAL OFFENSES, DRUG OFFENSES, AND LOWER-LEVEL
14 MISDEMEANORS AND FELONIES THAT DO NOT CREATE AN IMMEDIATE
15 SAFETY THREAT, SUCH AS THE ALLEGED LOWER-LEVEL FELONY FOR WHICH
16 GEORGE FLOYD WAS KILLED.

17 (2) THE WORKING GROUP SHALL REPORT TO THE HOUSE OF
18 REPRESENTATIVES JUDICIARY COMMITTEE AND THE SENATE JUDICIARY
19 COMMITTEE, OR ANY SUCCESSOR COMMITTEES, REGARDING THE WORKING
20 GROUP'S FINDINGS AND PROPOSED STATEWIDE POLICY AND LEGISLATIVE
21 INITIATIVES BY FEBRUARY 1, 2022.

22 **SECTION 3.** In Colorado Revised Statutes, 16-5-206, **add** (1.7)
23 as follows:

24 **16-5-206. Summons in lieu of warrant or arrest - definitions.**

25 (1.7) (a) A PEACE OFFICER MAY ISSUE A SUMMONS AND SHALL NOT
26 SUBJECT A PERSON TO A JAIL-ELIGIBLE ARREST BASED ON PROBABLE
27 CAUSE TO BELIEVE THE A PERSON COMMITTED A TRAFFIC OFFENSE, PETTY

1 OFFENSE, DRUG PETTY OFFENSE, MUNICIPAL OFFENSE, DRUG
2 MISDEMEANOR, OR A MISDEMEANOR OFFENSE, UNLESS:

3 (I) THE ALLEGED OFFENSE IS:

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

5 (B) A VICTIM RIGHTS ACT CRIME, AS DEFINED IN SECTION
6 24-4.1-302 (1);

7 (C) DRIVING UNDER THE INFLUENCE, AS DEFINED IN SECTION
8 42-4-1301;

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

11 (E) AN OFFENSE THAT CONSTITUTES UNLAWFUL SEXUAL BEHAVIOR
12 AS DEFINED IN SECTION 16-22-102 (9) OR FAILURE TO REGISTER AS A SEX
13 OFFENDER IN VIOLATION OF SECTION 18-3-412.5; OR

14 (F) A VIOLATION OF SECTION 13-14.5-111, 18-9-109 (6), OR
15 42-4-1413 OR MOTOR VEHICLE THEFT IN VIOLATION OF SECTION 18-4-409;
16 OR

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

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

23 (c) THIS SUBSECTION (1.7) CREATES AN OBLIGATION UPON AN
24 ARRESTING OFFICER AND DOES NOT REQUIRE A COURT OR A SHERIFF TO
25 PERFORM A REVIEW TO ENSURE COMPLIANCE WITH THIS SECTION AS IT
26 RELATES TO JAIL ADMISSIONS. THIS SUBSECTION (1.7) DOES NOT CREATE
27 A PRIVATE RIGHT OF ACTION FOR VIOLATIONS OF THIS SUBSECTION (1.7)

1 NOR PROVIDE A BASIS TO SEEK DISMISSAL OR SUPPRESSION OF EVIDENCE
2 IN A CRIMINAL CASE.

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

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

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

12 (A) WHEN A PEACE OFFICER TRANSPORTS A PERSON TO A CITY,
13 CITY AND COUNTY, OR COUNTY JAIL OR DETENTION FACILITY IN ORDER TO
14 HAVE THE PERSON SUBMIT TO FINGERPRINTING, PHOTOGRAPHING, DNA
15 TESTING, OR TESTING OF BLOOD, BREATH, SALIVA, OR URINE PRIOR TO
16 BEING RELEASED ON A SUMMONS AND COMPLAINT; OR

17 (B) WHEN A PEACE OFFICER TRANSPORTS A PERSON FOR ANY
18 OTHER LAWFUL PURPOSE OR TO ANY OTHER FACILITY TO WHICH A PEACE
19 OFFICER HAS AUTHORITY TO TRANSPORT, SUCH AS A HOSPITAL,
20 DETOXIFICATION FACILITY, OR BEHAVIORAL OR MENTAL HEALTH FACILITY,
21 UNLESS THE PEACE OFFICER INTENDS TO HAVE THE PERSON HELD IN JAIL
22 UPON DISCHARGE FROM SUCH FACILITY.

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

25 **16-4-113. Type of bond in certain cases - definition.**

26 (3) (a) EXCEPT AS PROVIDED FOR IN SUBSECTION (2) OF THIS SECTION, A
27 COURT SHALL NOT IMPOSE A MONETARY CONDITION OF RELEASE UNLESS

1 THE COURT FINDS ON THE RECORD THAT THERE IS A SUBSTANTIAL RISK
2 THAT THE DEFENDANT WILL FLEE PROSECUTION OR THREATEN THE SAFETY
3 OF ANOTHER PERSON AND NO OTHER CONDITION OF RELEASE CAN
4 REASONABLY MITIGATE THE RISK; EXCEPT THAT THIS SUBSECTION (3)(a)
5 DOES NOT LIMIT A COURT'S AUTHORITY TO IMPOSE A MONETARY
6 CONDITION OF RELEASE FOR AN ALLEGED CLASS 1, 2, OR 3 FELONY.

7 (b) (I) IN ORDER TO AVOID PRETRIAL DETENTION ON FAILURE TO
8 APPEAR IN COURT WHEN THE FAILURE TO APPEAR DID NOT HARM VICTIMS
9 OR WITNESSES, THE COURT SHALL GRANT A DEFENDANT A PERSONAL
10 RECOGNIZANCE BOND WHEN A DEFENDANT APPEARS BEFORE THE COURT
11 ON A WARRANT FOR FAILURE TO APPEAR, UNLESS:

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

15 (B) THE DEFENDANT INTENTIONALLY FAILED TO APPEAR FOR THE
16 PURPOSE OF INTERFERING WITH OR DETERRING VICTIM OR WITNESS
17 PARTICIPATION IN THE CASE;

18 (C) THE DEFENDANT FAILED TO APPEAR ONE OR MORE TIMES IN
19 THE CASE; OR

20 (D) THE COURT FINDS THE DEFENDANT IS LIKELY TO FLEE
21 PROSECUTION.

22 (II) THE COURT MAY IMPOSE A MONETARY BOND IN THE
23 CIRCUMSTANCES DESCRIBED IN SUBSECTIONS (3)(b)(I)(A) TO (3)(b)(I)(D)
24 OF THIS SECTION WHEN THE COURT FINDS NO OTHER CONDITIONS OF
25 RELEASE CAN REASONABLY MITIGATE THE RISK OF FUTURE FAILURE TO
26 APPEAR.

27 (c) (I) WHEN A PROBATIONER APPEARS BEFORE THE COURT ON A

1 WARRANT FOR FAILURE TO COMPLY WITH CONDITIONS OF PROBATION FOR
2 WHICH THE UNDERLYING BEHAVIOR IS NOT A CRIMINAL OFFENSE, THE
3 COURT SHALL GRANT THE PROBATIONER A PERSONAL RECOGNIZANCE
4 BOND, UNLESS:

5 (A) THE VIOLATION WAS A FAILURE TO COMPLY WITH ANY COURT-
6 ORDERED TREATMENT RELATED TO A SEX OFFENSE OR A CRIME OF
7 DOMESTIC VIOLENCE, AND THE COURT FINDS ON THE RECORD THAT THE
8 FAILURE TO COMPLY POSES A SUBSTANTIAL RISK TO THE SAFETY OF
9 ANOTHER AND WAS NOT BASED SOLELY ON AN INABILITY TO PAY;

10 (B) THE DEFENDANT HAS ALREADY HAD PROBATION REVOKED FOR
11 FAILURE TO COMPLY IN THE CASE; OR

12 (C) THE COURT FINDS A DEFENDANT IS LIKELY TO FLEE
13 PROSECUTION.

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

17 (d) NOTWITHSTANDING THIS SUBSECTION (3), THIS SECTION DOES
18 NOT PROHIBIT THE RELEASE OF A PERSON PURSUANT TO LOCAL PRETRIAL
19 RELEASE POLICIES THAT REQUIRE PAYMENT OF A MONETARY CONDITION
20 OF RELEASE PRIOR TO AN INDIVIDUALIZED DECISION BY A JUDGE, A
21 PRETRIAL OFFICER, A BONDING AND RELEASE COMMISSIONER, OR ANY
22 OTHER JUDICIAL OFFICER.

23 (4) AS USED IN THIS SECTION, "FLEE PROSECUTION" MEANS
24 PLANNING OR ATTEMPTING TO INTENTIONALLY EVADE PROSECUTION BY
25 CONCEALING ONESELF. SIMPLE PAST NONAPPEARANCE IN COURT ALONE IS
26 NOT EVIDENCE OF FUTURE INTENT TO FLEE PROSECUTION. CITIZENSHIP
27 STATUS ALONE IS NOT EVIDENCE OF FUTURE INTENT TO FLEE

1 PROSECUTION.

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3 **SECTION 5.** In Colorado Revised Statutes, **add** 30-10-528 as
4 follows:

5 **30-10-528. Sheriff - jail population management.** THE GENERAL
6 ASSEMBLY ENCOURAGES AND AUTHORIZES SHERIFFS TO ACTIVELY
7 MANAGE THEIR JAIL POPULATIONS IN ORDER TO KEEP THE POPULATION AS
8 LOW AS POSSIBLE WHILE MAINTAINING COMMUNITY SAFETY, INCLUDING
9 THE AUTHORITY TO ESTABLISH JAIL ADMISSION STANDARDS THAT INCLUDE
10 OFFENSE-BASED ADMISSION STANDARDS THAT LIMIT JAIL ADMISSIONS.

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

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

25 **SECTION 7. Act subject to petition - effective date.** This act
26 takes effect January 1, 2022; except that sections 1 and 7 of this act take
27 effect at 12:01 a.m. on the day following the expiration of the ninety-day

1 period after final adjournment of the general assembly; except that, if a
2 referendum petition is filed pursuant to section 1 (3) of article V of the
3 state constitution against this act or an item, section, or part of this act
4 within the ninety-day period after final adjournment of the general
5 assembly, then the act, item, section, or part will not take effect unless
6 approved by the people at the general election to be held in November
7 2022 and, in such case, will take effect on the date of the official
8 declaration of the vote thereon by the governor.