

**Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 26-0799.01 Ken Fowler x2372

SENATE BILL 26-112

SENATE SPONSORSHIP

Zamora Wilson,

HOUSE SPONSORSHIP

Soper,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING DEFENDANTS WHO FAIL TO APPEAR IN COURT, AND, IN**
102 **CONNECTION THEREWITH, PERMITTING CERTAIN CONDITIONS**
103 **ON PRETRIAL RELEASE FOR DEFENDANTS WHO HAVE**
104 **PREVIOUSLY FAILED TO APPEAR.**

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>.)

Under current law, a court is required to release a person on a personal recognizance bond if the person was charged with an offense for a violation with a maximum penalty that does not exceed 6 months'

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.

imprisonment and the court cannot require the person to give security of any kind for their appearance for trial other than their personal recognizance, unless certain conditions exist. The bill clarifies that these provisions apply in both state and municipal courts. The bill adds to the conditions for which a person may be required to give security that the defendant previously failed to appear in court 2 or more times in the present case.

Existing law prohibits a court from imposing a monetary condition of release for a defendant charged with a traffic offense, petty offense, or comparable municipal offense, or a municipal offense for which there is no comparable state misdemeanor offense, with specified exceptions. The bill adds exceptions for:

- A petty offense for theft, criminal mischief, or arson, or a comparable municipal offense, or a municipal offense involving threats of violence, injury, or property damage, if the defendant has previously failed to appear in court 2 or more times in the present case; and
- Any other petty offense, traffic offense, or a comparable municipal offense, or a municipal offense for which there is no comparable state offense, if the defendant has previously failed to appear for a court proceeding 2 or more times in the present case and has another pending charge for the same offense in the same jurisdiction.

The bill states that if a defendant's counsel is present at a court proceeding as required by a court and the defendant is not present, with the exceptions of trial, arraignment, contested hearings, and hearings in which a witness or victim is testifying before the court, the defendant's absence may not be considered a failure to appear. The bill applies the exceptions involving previous instances of a defendant's failure to appear for a municipal court proceeding only when, prior to issuing a warrant for the arrest of the defendant for the previous failure to appear, the court conducted a search to determine whether the defendant was being held in a correctional facility or county jail, and at the time of the previous failure to appear, the court had certain processes in place governing failures to appear.

The bill requires municipal courts to not consider a person's absence from a place and time specified in a summons or summons and complaint as a failure to appear if the person's counsel is present on their behalf.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 16-4-113 as

1 follows:

2 **16-4-113. Type of bond in certain nonfelony cases.**

3 (1) (a) ~~In exercising the discretion mentioned in section 16-4-104,~~
4 ~~the~~ EXCEPT IN THE CIRCUMSTANCES DESCRIBED IN SUBSECTION (1)(b) OF
5 THIS SECTION, IF AN ACCUSED PERSON IS CHARGED WITH COMMITTING AN
6 OFFENSE FOR WHICH THE MAXIMUM PENALTY DOES NOT EXCEED SIX
7 MONTHS' IMPRISONMENT, A judge shall release the accused person upon
8 personal recognizance ~~if the charge is any offense for a violation of which~~
9 ~~the maximum penalty does not exceed six months' imprisonment, and the~~
10 AND, EXCEPT AS PROVIDED IN SUBSECTION (1)(b) OF THIS SECTION, SHALL
11 NOT REQUIRE THE accused person ~~shall not be required~~ to supply a surety
12 bond or give security of any kind for their appearance for trial other than
13 their personal recognizance. ~~unless one or more of the following facts are~~
14 ~~found to be present:~~

15 (b) A JUDGE MAY REQUIRE THE ACCUSED PERSON TO SUPPLY A
16 SURETY BOND OR GIVE SECURITY FOR THE ACCUSED PERSON'S
17 APPEARANCE FOR TRIAL OTHER THAN THEIR PERSONAL RECOGNIZANCE IF:

18 (a) (I) The ~~arrested~~ person fails to sufficiently identify ~~himself or~~
19 ~~herself~~ THEMSELF; or

20 (b) (II) The ~~arrested~~ person refuses to sign a personal
21 recognizance; or

22 (c) (III) The continued detention or posting of a surety bond is
23 necessary to prevent imminent bodily harm to the accused PERSON or to
24 another; or

25 (d) (IV) The ~~arrested~~ person has no ties to the jurisdiction of the
26 court reasonably sufficient to assure ~~his or her~~ THEIR appearance, and
27 there is substantial likelihood that ~~he or she~~ THE PERSON will fail to

1 appear for trial if released upon ~~his or her~~ THEIR personal recognizance;
2 or

3 ~~(e)~~ (V) The ~~arrested~~ person has previously failed to appear for trial
4 for an offense concerning which ~~he or she~~ THE PERSON had given ~~his~~
5 THEIR written promise to appear; or

6 ~~(f)~~ (VI) There is outstanding a warrant for ~~his or her~~ THE PERSON'S
7 arrest on any other charge or there are pending proceedings against ~~him~~
8 ~~or her~~ THEM for suspension or revocation of parole or probation; OR

9 (VII) SUBJECT TO SUBSECTIONS (3) AND (4) OF THIS SECTION, THE
10 PERSON HAS PREVIOUSLY FAILED TO APPEAR FOR A COURT PROCEEDING AS
11 REQUIRED BY A COURT TWO OR MORE TIMES IN THE PRESENT CASE.

12 (c) THIS SUBSECTION (1) APPLIES IN STATE AND MUNICIPAL
13 COURTS.

14 (2) (a) A COURT SHALL NOT IMPOSE A MONETARY CONDITION OF
15 RELEASE for a defendant charged with:

16 (I) A traffic offense, a petty offense, or a comparable municipal
17 offense, ~~a court shall not impose a monetary condition of release. If the~~
18 INCLUDING A comparable municipal offense THAT is a property crime and
19 the factual basis reflects a value of property loss or damage that would be
20 a petty offense property crime if charged under state law; ~~this subsection~~
21 ~~(2)(a) applies.~~ OR

22 (II) A MUNICIPAL OFFENSE FOR WHICH THERE IS NO COMPARABLE
23 STATE MISDEMEANOR OFFENSE.

24 ~~(b) For a defendant charged with a municipal offense for which~~
25 ~~there is no comparable state misdemeanor offense, the court shall not~~
26 ~~impose a monetary condition of release.~~

27 ~~(c)~~ (b) THIS SUBSECTION (2) DOES NOT PROHIBIT:

1 (I) THE RELEASE OF A DEFENDANT, PURSUANT TO LOCAL PRETRIAL
2 RELEASE POLICIES, after arrest but prior to an individual consideration of
3 bond by a judge, bonding commissioner, judicial officer, or judicial
4 designee with the power to set conditions of release, ~~this subsection (2)~~
5 ~~does not prohibit the release of a defendant pursuant to local pretrial~~
6 ~~release policies, including those~~ LOCAL PRETRIAL RELEASE POLICIES that
7 require payment of a monetary condition of release, if the defendant is
8 first informed that the defendant is entitled to release on a personal
9 recognizance bond; OR

10 ~~(d)~~ (II) ~~Nothing in this subsection (2) prohibits the issuance of A~~
11 COURT FROM ISSUING a warrant with monetary conditions of bond for a
12 defendant who fails to appear in court as required or who violates a
13 condition of release. If a defendant is unable to post the monetary
14 condition of bond prior to the next individualized consideration of bond,
15 the judge, bonding commissioner, judicial officer, or judicial designee
16 with the power to set conditions of release shall release the person on
17 personal recognizance.

18 ~~(e)~~ (c) ~~The provisions of This subsection (2) do~~ DOES not apply to:

19 (I) A traffic offense involving death or bodily injury or a
20 municipal offense with substantially similar elements;

21 (II) Eluding or attempting to elude a police officer as described in
22 section 42-4-1413 or a municipal offense with substantially similar
23 elements;

24 (III) Operating a vehicle after circumventing an interlock device
25 as described in section 42-2-132.5 (10) or a municipal offense with
26 substantially similar elements; ~~and~~

27 (IV) A municipal offense that has substantially similar elements

1 to a state misdemeanor offense;

2 (V) SUBJECT TO SUBSECTIONS (3) AND (4) OF THIS SECTION, A
3 PETTY OFFENSE FOR THEFT, CRIMINAL MISCHIEF, OR ARSON, OR A
4 COMPARABLE MUNICIPAL OFFENSE, IF THE DEFENDANT HAS PREVIOUSLY
5 FAILED TO APPEAR FOR A COURT PROCEEDING AS REQUIRED BY A COURT
6 TWO OR MORE TIMES IN THE PRESENT CASE; AND

7 (VI) SUBJECT TO SUBSECTIONS (3) AND (4) OF THIS SECTION, A
8 PETTY OFFENSE, TRAFFIC OFFENSE, OR A COMPARABLE MUNICIPAL OFFENSE
9 OR A MUNICIPAL OFFENSE FOR WHICH THERE IS NO COMPARABLE STATE
10 OFFENSE, THAT IS NOT LISTED IN SUBSECTION (2)(c)(V) OF THIS SECTION
11 IF THE DEFENDANT HAS PREVIOUSLY FAILED TO APPEAR FOR A COURT
12 PROCEEDING AS REQUIRED BY A COURT TWO OR MORE TIMES IN THE
13 PRESENT CASE AND HAS ANOTHER PENDING CASE FOR THE SAME OFFENSE
14 IN THE SAME JURISDICTION.

15 (3) A DEFENDANT'S FAILURE TO BE PRESENT FOR A COURT
16 PROCEEDING AS REQUIRED BY A COURT IS NOT CONSIDERED A FAILURE TO
17 APPEAR FOR PURPOSES OF THIS SECTION IF THE DEFENDANT'S COUNSEL IS
18 PRESENT AND THE COURT PROCEEDING IS NOT THE DEFENDANT'S TRIAL OR
19 ARRAIGNMENT, A CONTESTED HEARING, OR A HEARING IN WHICH A
20 WITNESS OR VICTIM IS TESTIFYING BEFORE THE COURT. THE DEFENDANT
21 MUST BE PRESENT FOR ALL COURT PROCEEDINGS AS REQUIRED BY THE
22 COURT IF THE DEFENDANT IS SELF-REPRESENTED.

23 (4) A FAILURE TO APPEAR THAT OCCURRED IN A MUNICIPAL COURT
24 ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (4) QUALIFIES AS
25 A PREVIOUS FAILURE TO APPEAR FOR THE PURPOSES OF SUBSECTIONS
26 (1)(b)(VII), (2)(c)(V), AND (2)(c)(VI) OF THIS SECTION ONLY IF THE
27 MUNICIPAL COURT:

1 (a) PRIOR TO ISSUING A WARRANT FOR THE ARREST OF THE
2 DEFENDANT FOR THE PREVIOUS FAILURE TO APPEAR, CONDUCTED AN
3 ELECTRONIC SEARCH OF AVAILABLE COURT DATABASES OR ONLINE
4 RESOURCES TO DETERMINE WHETHER THE DEFENDANT WAS BEING HELD
5 IN A CORRECTIONAL FACILITY, AS DEFINED IN SECTION 17-1-102, OR IN THE
6 COUNTY JAIL FOR THE COUNTY IN WHICH THE COURT IS LOCATED; AND

7 (b) AT THE TIME OF THE DEFENDANT'S PREVIOUS FAILURE TO
8 APPEAR:

9 (I) HAD A PROCESS THAT ALLOWS A DEFENDANT TO INFORMALLY
10 CONTACT THE COURT BY REMOTE MEANS, INCLUDING, BUT NOT LIMITED
11 TO, BY PHONE OR EMAIL, ON OR BEFORE THE DAY OF THE COURT
12 APPEARANCE TO REQUEST A CONTINUANCE, AND THAT AFTER THE
13 DEFENDANT ENGAGES THE PROCESS, ALLOWS THE COURT TO REQUIRE THE
14 DEFENDANT TO MAKE THE REQUEST IN WRITING AND SEND THE REQUEST
15 TO THE COURT BY ANY MEANS, INCLUDING EMAIL;

16 (II) HAD A PROCESS TO QUASH A WARRANT FOR A FAILURE TO
17 APPEAR THAT ALLOWS THE DEFENDANT TO CONTACT THE COURT FOR THE
18 PURPOSE OF RESETTING THE DEFENDANT'S APPEARANCE AFTER THE
19 DEFENDANT'S FAILURE TO APPEAR BUT PRIOR TO THE DEFENDANT'S NEXT
20 COURT PROCEEDING, AND THAT AFTER THE DEFENDANT ENGAGES THE
21 PROCESS, ALLOWS THE COURT TO REQUIRE THE DEFENDANT TO MAKE THE
22 REQUEST IN WRITING AND SEND THE REQUEST TO THE COURT BY ANY
23 MEANS, INCLUDING EMAIL, AND A PROCESS TO EXCUSE A FAILURE TO
24 APPEAR IF THE DEFENDANT APPEARS AT THE NEXT COURT PROCEEDING;

25 (III) HAD A PROCESS FOR THE COURT TO EXCUSE A DEFENDANT'S
26 FAILURE TO APPEAR FOR A COURT PROCEEDING IF THE DEFENDANT
27 PRODUCES EVIDENCE SHOWING THAT THEIR FAILURE TO APPEAR WAS NOT

1 WILLFUL OR WAS CAUSED BY EXCUSABLE NEGLIGENCE; AND
2 (IV) POSTED THE PROCESSES DESCRIBED IN THIS SUBSECTION (4)
3 ONLINE AND AT THE COURTHOUSE, IN BOTH ENGLISH AND SPANISH.

4 **SECTION 2.** In Colorado Revised Statutes, 13-10-127, **add** (1.5)
5 as follows:

6 **13-10-127. Failure to appear.**

7 (1.5) IF A PERSON IS NOT PRESENT AT THE PLACE AND TIME
8 SPECIFIED IN THE SUMMONS OR SUMMONS AND COMPLAINT, BUT THE
9 PERSON'S COUNSEL IS PRESENT, THE COURT SHALL NOT CONSIDER THE
10 PERSON'S ABSENCE A FAILURE TO APPEAR.

11 **SECTION 3. Act subject to petition - effective date -**
12 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
13 the expiration of the ninety-day period after final adjournment of the
14 general assembly (August 12, 2026, if adjournment sine die is on May 13,
15 2026); except that, if a referendum petition is filed pursuant to section 1
16 (3) of article V of the state constitution against this act or an item, section,
17 or part of this act within such period, then the act, item, section, or part
18 will not take effect unless approved by the people at the general election
19 to be held in November 2026 and, in such case, will take effect on the
20 date of the official declaration of the vote thereon by the governor.

21 (2) This act applies to offenses committed on or after the
22 applicable effective date of this act.