

Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

PREAMENDED

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

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 AN 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 SUBSECTION (3) OF THIS SECTION, THE PERSON
10 HAS PREVIOUSLY FAILED TO APPEAR FOR A COURT PROCEEDING AS
11 REQUIRED BY A COURT THREE 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. AND

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; AND

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

7 (3) A FAILURE TO APPEAR THAT OCCURRED ON OR AFTER THE
8 EFFECTIVE DATE OF THIS SUBSECTION (3) QUALIFIES AS A PREVIOUS
9 FAILURE TO APPEAR FOR THE PURPOSES OF SUBSECTIONS (1)(b)(VII) AND
10 (2)(c)(V) OF THIS SECTION ONLY IF THE COURT:

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

17 (b) AT THE TIME OF THE DEFENDANT'S PREVIOUS FAILURE TO
18 APPEAR:

19 (I) HAD A PROCESS THAT ALLOWS A DEFENDANT TO INFORMALLY
20 CONTACT THE COURT BY REMOTE MEANS, INCLUDING, BUT NOT LIMITED
21 TO, BY PHONE OR EMAIL, ON OR BEFORE THE DAY OF THE COURT
22 APPEARANCE TO REQUEST A CONTINUANCE, AND THAT AFTER THE
23 DEFENDANT ENGAGES THE PROCESS, ALLOWS THE COURT TO REQUIRE THE
24 DEFENDANT TO MAKE THE REQUEST IN WRITING AND SEND THE REQUEST
25 TO THE COURT BY ANY MEANS, INCLUDING EMAIL;

26 (II) HAD A PROCESS TO QUASH A WARRANT FOR A FAILURE TO
27 APPEAR THAT ALLOWS THE DEFENDANT TO CONTACT THE COURT FOR THE

1 PURPOSE OF RESETTING THE DEFENDANT'S APPEARANCE AFTER THE
2 DEFENDANT'S FAILURE TO APPEAR BUT PRIOR TO THE DEFENDANT'S NEXT
3 COURT PROCEEDING, AND THAT AFTER THE DEFENDANT ENGAGES THE
4 PROCESS, ALLOWS THE COURT TO REQUIRE THE DEFENDANT TO MAKE THE
5 REQUEST IN WRITING AND SEND THE REQUEST TO THE COURT BY ANY
6 MEANS, INCLUDING EMAIL, AND A PROCESS TO EXCUSE A FAILURE TO
7 APPEAR IF THE DEFENDANT APPEARS AT THE NEXT COURT PROCEEDING;

8 (III) HAD A PROCESS FOR THE COURT TO EXCUSE A DEFENDANT'S
9 FAILURE TO APPEAR FOR A COURT PROCEEDING IF THE DEFENDANT
10 PRODUCES EVIDENCE SHOWING THAT THEIR FAILURE TO APPEAR WAS NOT
11 WILLFUL OR WAS CAUSED BY EXCUSABLE NEGLIGENCE; AND

12 (IV) POSTED THE PROCESSES DESCRIBED IN THIS SUBSECTION (3)
13 ONLINE AND AT THE COURTHOUSE, IN BOTH ENGLISH AND SPANISH.

14 **SECTION 2. Act subject to petition - effective date -**
15 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
16 the expiration of the ninety-day period after final adjournment of the
17 general assembly (August 12, 2026, if adjournment sine die is on May 13,
18 2026); except that, if a referendum petition is filed pursuant to section 1
19 (3) of article V of the state constitution against this act or an item, section,
20 or part of this act within such period, then the act, item, section, or part
21 will not take effect unless approved by the people at the general election
22 to be held in November 2026 and, in such case, will take effect on the
23 date of the official declaration of the vote thereon by the governor.

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