

**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. 21-0193.02 Michael Dohr x4347

**SENATE BILL 21-062**

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**SENATE SPONSORSHIP**

**Lee,**

**HOUSE SPONSORSHIP**

**Benavidez,**

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**Senate Committees**

Judiciary  
Appropriations

**House Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING MEASURES TO SAFELY REDUCE JAIL POPULATIONS BY**  
102      **AMENDING PROCEDURES PRIOR TO CONVICTION.**

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**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 gives a peace officer the authority to issue a summons and complaint for any offense committed in the officer's presence, or if not committed in the officer's presence, for any offense that the officer has probable cause to believe was committed and probable cause to believe was committed by the person charged, unless arrest is statutorily required or the offense is a crime of violence.

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.

The bill prohibits a peace officer from arresting a person based solely on the alleged commission of a traffic offense; petty offense; municipal offense; misdemeanor offense; a class 4, 5, or 6 felony; or a level 3 or 4 drug felony unless:

- A custodial arrest is statutorily required;
- The officer is unable to sufficiently verify the individual's identity absent a custodial arrest;
- The person was convicted for a violation of section 42-4-1301, Colorado Revised Statutes, in the previous 12 months; or
- The offense is a felony or a victims' rights crime, the offense includes an element of illegal possession or use of firearm, the offense constitutes unlawful sexual behavior, or the offense is a violation 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 and:
  - The arresting officer records in the arrest documents a reasonable suspicion to conclude the person poses a threat to the safety of another, absent custodial arrest; or
  - The arresting officer records in the arrest documents a reasonable suspicion to conclude the person has indicated a clear unwillingness to cease and desist in criminal behavior, absent 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 level 3 or 4 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 has failed to appear 3 or more times in the case. The bill requires the court to issue a personal recognizance bond in a failure to comply with conditions probation hearing unless it is based on a commission of a new crime.

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.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 16-2-104 as

1 follows:

2 **16-2-104. Issuance of summons and complaint.** (1) (a) ~~A~~  
3 ~~summons and complaint may be issued by any peace officer for an~~  
4 ~~offense constituting a misdemeanor, or a petty offense committed in his~~  
5 ~~presence or, if not committed in his presence, which he has probable~~  
6 ~~cause to believe was committed and probable cause to believe was~~  
7 ~~committed by the person charged~~ A SUMMONS AND COMPLAINT MAY BE  
8 ISSUED BY ANY PEACE OFFICER FOR ANY OFFENSE COMMITTED IN THE  
9 OFFICER'S PRESENCE, OR IF NOT COMMITTED IN THE OFFICER'S PRESENCE,  
10 A WARRANTLESS ARREST FOR ANY OFFENSE THAT THE OFFICER HAS  
11 PROBABLE CAUSE TO BELIEVE WAS COMMITTED AND PROBABLE CAUSE TO  
12 BELIEVE WAS COMMITTED BY THE PERSON CHARGED, UNLESS ARREST IS  
13 STATUTORILY REQUIRED OR THE OFFENSE IS A CRIME OF VIOLENCE, AS  
14 DEFINED IN SECTION 18-1.3-406.

15 (b) A PEACE OFFICER SHALL NOT SUBJECT A PERSON TO A  
16 WARRANTLESS DETENTION-ELIGIBLE ARREST BASED SOLELY ON THE  
17 ALLEGED COMMISSION OF A TRAFFIC OFFENSE; PETTY OFFENSE; MUNICIPAL  
18 OFFENSE; MISDEMEANOR OFFENSE; A CLASS 4, 5, OR 6 FELONY; OR A LEVEL  
19 3 OR 4 DRUG FELONY UNLESS:

20 (I) A DETENTION-ELIGIBLE ARREST IS STATUTORILY REQUIRED;

21 (II) THE OFFICER IS UNABLE TO SUFFICIENTLY VERIFY THE  
22 INDIVIDUAL'S IDENTITY ABSENT A DETENTION-ELIGIBLE ARREST;

23 (III) THE OFFICER HAS PROBABLE CAUSE TO BELIEVE THE PERSON  
24 VIOLATED SECTION 42-4-1301 AND THE PERSON WAS CONVICTED FOR A  
25 VIOLATION OF SECTION 42-4-1301 IN THE PREVIOUS FIVE YEARS OR WAS  
26 PREVIOUSLY CONVICTED FOR A VIOLATION OF SECTION 42-4-1301 THREE  
27 OR MORE TIMES; EXCEPT THAT A PEACE OFFICER MAY SUBJECT A PERSON

1 TO CUSTODIAL ARREST BASED ON PROBABLE CAUSE TO BELIEVE THE  
2 PERSON VIOLATED SECTION 42-4-1301 WHEN A DETOXIFICATION FACILITY,  
3 SOBER PARTY, OR HOSPITAL IS UNAVAILABLE AND THE OFFICER HAS  
4 REASONABLE SUSPICION TO CONCLUDE THE PERSON POSES A SUBSTANTIAL  
5 RISK TO THE SAFETY OF ANOTHER, ABSENT CUSTODIAL ARREST; OR

6 (IV) THE OFFENSE IS A FELONY, THE OFFENSE IS A VICTIMS' RIGHTS  
7 ACT CRIME, AS DEFINED IN SECTION 24-4.1-302 (1), THE OFFENSE  
8 INCLUDES AN ELEMENT OF ILLEGAL POSSESSION OR USE OF FIREARM, THE  
9 OFFENSE CONSTITUTES UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN  
10 SECTION 16-22-102 (9), THE OFFENSE IS FAILURE TO REGISTER AS A SEX  
11 OFFENDER IN VIOLATION OF SECTION 18-3-412.5, OR THE OFFENSE IS A  
12 VIOLATION SECTION 13-14.5-111, SECTION 18-9-109 (6), OR SECTION  
13 42-4-1413 AND:

14 (A) THE ARRESTING OFFICER RECORDS IN THE ARREST DOCUMENTS  
15 A REASONABLE SUSPICION TO CONCLUDE THE PERSON POSES A THREAT TO  
16 THE SAFETY OF ANOTHER, ABSENT DETENTION-ELIGIBLE ARREST; OR

17 (B) THE ARRESTING OFFICER RECORDS IN THE ARREST DOCUMENTS  
18 A REASONABLE SUSPICION TO CONCLUDE THE PERSON HAS INDICATED A  
19 CLEAR UNWILLINGNESS TO CEASE AND DESIST IN CRIMINAL BEHAVIOR,  
20 ABSENT DETENTION-ELIGIBLE ARREST.

21 (c) THIS SECTION CREATES OBLIGATIONS UPON ARRESTING  
22 OFFICERS. THIS SUBSECTION (1) DOES NOT REQUIRE A COURT OR A SHERIFF  
23 TO PERFORM A REVIEW TO ENSURE COMPLIANCE WITH THIS SECTION AS IT  
24 RELATES TO JAIL ADMISSIONS. THIS SUBSECTION (1) DOES NOT CREATE A  
25 PRIVATE RIGHT OF ACTION FOR VIOLATIONS OF THIS SUBSECTION OR  
26 PROVIDE A BASIS TO SEEK DISMISSAL OR SUPPRESSION OF EVIDENCE IN A  
27 CRIMINAL CASE.

1 (2) Except for penalty assessment notices, which ~~shall~~ MUST be  
2 handled according to the procedures set forth in section 16-2-201, a copy  
3 of a summons and complaint ~~so~~ issued ~~shall~~ PURSUANT TO THIS SECTION  
4 MUST be filed immediately with the county court before which appearance  
5 is required, and a second copy ~~shall~~ MUST be given to the district attorney  
6 or deputy district attorney for the county.

7 (3) (a) AS USED IN THIS SECTION, "DETENTION-ELIGIBLE ARREST"  
8 MEANS WHEN A PEACE OFFICER ARRESTS A PERSON AND TAKES THE  
9 PERSON INTO PHYSICAL CUSTODY FOR THE PURPOSE OF TRANSPORTING THE  
10 PERSON TO BE HELD IN A CITY, CITY AND COUNTY, OR COUNTY JAIL OR  
11 DETENTION FACILITY UNTIL SUCH TIME AS THE PERSON EITHER APPEARS  
12 BEFORE A COURT OR IS RELEASED ON BOND.

13 (b) "DETENTION-ELIGIBLE ARREST" DOES NOT INCLUDE:

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

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

25 **SECTION 2.** In Colorado Revised Statutes, 16-4-113, **add** (3)  
26 **and** (4) as follows:

27 **16-4-113. Type of bond in certain cases.** (3) (a) EXCEPT AS

1 PROVIDED FOR IN SUBSECTION (2) OF THIS SECTION, FOR A DEFENDANT  
2 CHARGED WITH A CLASS 4, 5, OR 6 FELONY; A LEVEL 3 OR 4 DRUG OFFENSE;  
3 A MISDEMEANOR; OR A MUNICIPAL OFFENSE, A COURT SHALL NOT IMPOSE  
4 A MONETARY CONDITION OF RELEASE UNLESS THE COURT FINDS ON THE  
5 RECORD THAT THERE IS A SUBSTANTIAL RISK THAT THE DEFENDANT WILL  
6 FLEE PROSECUTION OR THREATEN THE SAFETY OF ANOTHER PERSON AND  
7 NO OTHER CONDITION OF RELEASE CAN REASONABLY MITIGATE THE RISK.

8 (b) (I) WHEN A DEFENDANT APPEARS BEFORE THE COURT BASED  
9 ON A FAILURE TO APPEAR WARRANT, THE COURT SHALL GRANT THE  
10 DEFENDANT A PERSONAL RECOGNIZANCE BOND UNLESS THE DEFENDANT:

11 (A) FAILED TO APPEAR THREE OR MORE TIMES IN THE CASE; OR

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

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

18 (II) THE COURT MAY IMPOSE MONETARY BOND IN THE  
19 CIRCUMSTANCES DESCRIBED IN SUBSECTIONS (3)(b)(I)(A) TO (3)(b)(I)(C)  
20 OF THIS SECTION WHEN THE COURT FINDS NO OTHER CONDITIONS OF  
21 RELEASE CAN REASONABLY MITIGATE THE RISK OF FUTURE FAILURE TO  
22 APPEAR.

23 (c) (I) WHEN A PROBATIONER APPEARS BEFORE THE COURT ON A  
24 WARRANT FOR FAILURE TO COMPLY WITH CONDITIONS OF PROBATION FOR  
25 WHICH THE UNDERLYING BEHAVIOR IS NOT A CRIMINAL OFFENSE, THE  
26 COURT SHALL GRANT THE PROBATIONER A PERSONAL RECOGNIZANCE  
27 BOND UNLESS:

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

6           (B) THE DEFENDANT HAS ALREADY HAD PROBATION REVOKED FOR  
7           FAILURE TO COMPLY IN THE CASE.

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

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

17          (e) NOTHING IN THIS SUBSECTION (3) LIMITS THE COURTS  
18          AUTHORITY TO SET MONEY BOND WHEN THE COURT FINDS A DEFENDANT  
19          IS LIKELY TO FLEE PROSECUTION AND THAT THERE ARE NO OTHER  
20          CONDITIONS OF RELEASE THAT CAN REASONABLY MITIGATE THAT RISK."

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

27          **SECTION 3.** In Colorado Revised Statutes, **add** 30-10-528 as

1 follows:

2 **30-10-528. Sheriff - jail population management.** THE GENERAL  
3 ASSEMBLY ENCOURAGES AND AUTHORIZES SHERIFFS TO ACTIVELY  
4 MANAGE THEIR JAIL POPULATIONS IN ORDER TO KEEP THE POPULATION AS  
5 LOW AS POSSIBLE WHILE MAINTAINING COMMUNITY SAFETY, INCLUDING  
6 THE AUTHORITY TO ESTABLISH JAIL ADMISSION STANDARDS THAT INCLUDE  
7 OFFENSE-BASED ADMISSION STANDARDS THAT LIMIT JAIL ADMISSIONS.

8 **SECTION 4.** In Colorado Revised Statutes, 16-5-206, **repeal**  
9 (1.5) as follows:

10 **16-5-206. Summons in lieu of warrant.** (1.5) (a) ~~Except in class~~  
11 ~~1, class 2, class 3, and class 4 felonies; in crimes described in section~~  
12 ~~24-4.1-302 (1), C.R.S.; and in unclassified felonies punishable by a~~  
13 ~~maximum penalty of more than ten years, a law enforcement officer may~~  
14 ~~issue a summons commanding the appearance of the defendant in lieu of~~  
15 ~~a warrant for his or her arrest based on probable cause if:~~

16 ~~(I) The local district attorney consents to such procedure and has~~  
17 ~~developed and approved criteria for the issuance of such a summons~~  
18 ~~pursuant to this subsection (1.5);~~

19 ~~(II) There is a reasonable likelihood that the defendant will~~  
20 ~~appear;~~

21 ~~(III) The defendant has had no felony arrests during the preceding~~  
22 ~~five years;~~

23 ~~(IV) There is no allegation that the defendant used a deadly~~  
24 ~~weapon as defined in section 18-1-901 (3)(e), C.R.S., in the commission~~  
25 ~~of the crime; and~~

26 ~~(V) There are no outstanding warrants for the defendant's arrest.~~

27 ~~(b) No later than ten days after a law enforcement officer issues~~



1 a summons pursuant to this subsection (1.5), he or she shall deliver a copy  
2 to the court and to the office of the district attorney where jurisdiction  
3 lies.

4 (c) When the procedure described in this subsection (1.5) is used,  
5 an information or complaint may be filed in open court on the date  
6 specified in the summons.

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