

**First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 07-0522.01 Michael Dohr

HOUSE BILL 07-1040

HOUSE SPONSORSHIP

Stephens,

SENATE SPONSORSHIP

(None),

House Committees

State, Veterans, & Military Affairs
Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING LEGAL PROCESS FOR PERSONS WHO ARE NOT LEGALLY**
102 **PRESENT IN THIS COUNTRY, AND MAKING AN APPROPRIATION IN**
103 **CONNECTION THEREWITH.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires a no-bond warrant to be issued in a criminal case when the defendant is determined to be illegally present in the country and the defendant is either removed from the country or is subject to removal. Directs that a no-bond warrant be issued when a defendant who has posted a bond is released to the immigration and customs enforcement agency. Requires that a defendant arrested on a no-bond warrant pursuant

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

to the act shall be taken into custody and held.

Prohibits a court from dismissing criminal charges, at any stage of criminal proceedings, against a person who is illegally present in the country.

Prohibits a bond agent from recovering a bond or fees if the defendant who received the bond is determined to be illegally present in the country and is removed from the country.

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

2 **SECTION 1.** Article 3 of title 16, Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW PART to read:

4 **PART 5**

5 **WARRANTS AND BONDS FOR PERSONS ILLEGALLY**
6 **IN THE COUNTRY**

7 **16-3-501. Warrants issued for persons illegally in the country.**

8 (1) IF A PERSON HAS POSTED A BOND IN A CRIMINAL CASE, AT ANY STAGE
9 OF A CRIMINAL PROCEEDING, AND THE PERSON IS RELEASED TO THE
10 UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT AGENCY, THE
11 COURT SHALL ISSUE A WARRANT AND THE COURT SHALL SET THE AMOUNT
12 OF THE BOND ON THE WARRANT, AND THE WARRANT SHALL BE ENTERED
13 IN THE COLORADO CRIME INFORMATION CENTER AND THE NATIONAL
14 CRIME INFORMATION CENTER DATABASES, COMMANDING THE ARREST OF
15 THE PERSON WHEN CONTACTED ANYWHERE WITHIN THE UNITED STATES.
16 THE CRIMINAL CASE SHALL REMAIN ACTIVE FOR AN INDEFINITE PERIOD OF
17 TIME; EXCEPT THAT THE CASE MAY BE DISMISSED UPON A MOTION BY THE
18 DISTRICT ATTORNEY.

19 (2) A BOND ISSUED PURSUANT TO THIS SECTION SHALL INCLUDE
20 ALL KNOWN ALIASES FOR THE PERSON AND THE PERSON'S DATE OF BIRTH.

21 **16-3-502. No dismissal of cases against persons illegally in the**
22 **country.** (1) A COURT SHALL NOT DISMISS CRIMINAL CHARGES AGAINST

1 A PERSON BECAUSE THE PERSON HAS BEEN REMOVED OR IS FACING
2 REMOVAL FROM THE UNITED STATES PRIOR TO A CONVICTION OR OTHER
3 DISPOSITION OF ALL CRIMINAL CHARGES AGAINST THE PERSON; EXCEPT
4 THAT THE COURT MAY DISMISS A CASE UPON A MOTION OF THE DISTRICT
5 ATTORNEY.

6 (2) A COURT SHALL NOT DISMISS CRIMINAL CHARGES AGAINST A
7 PERSON WHO HAS BEEN CONVICTED OR PLED GUILTY TO A CRIME BECAUSE
8 THE PERSON HAS BEEN REMOVED OR IS FACING REMOVAL FROM THE
9 UNITED STATES. THE DEFENDANT SHALL SERVE HIS OR HER SENTENCE
10 AND PAY ALL RESTITUTION PRIOR TO REMOVAL.

11 (3) IF THE PROVISIONS OF PART 3 OF ARTICLE 4.1 OF TITLE 24,
12 C.R.S., APPLY, THE VICTIM SHALL BE CONSULTED PURSUANT TO THE
13 PROVISIONS OF SECTIONS 24-4.1-302.5 AND 24-4.1-303, C.R.S.

14 **16-3-503. Bonds recovered for persons illegally present in the**
15 **country.** (1) (a) IF A LAW ENFORCEMENT AGENCY HOLDING A

16 DEFENDANT DETERMINES THAT THE DEFENDANT IS PROBABLY ILLEGALLY
17 PRESENT IN THE UNITED STATES, THE LAW ENFORCEMENT AGENCY SHALL
18 NOTIFY THE DEFENDANT'S BAIL BONDING AGENT IN WRITING BEFORE THE
19 BOND IS POSTED. PRIOR TO POSTING A BOND FOR A DEFENDANT WHO MAY
20 BE PRESENT IN THE COUNTRY ILLEGALLY, A BONDING AGENT OR OTHER
21 PERSON SHALL EXECUTE A WAIVER THAT STATES THE AGENT OR PERSON
22 UNDERSTANDS THAT THE BOND OR FEES SHALL BE FORFEITED IF THE
23 DEFENDANT IS REMOVED FROM THE COUNTRY.

24 (b) EXCEPT AS PROVIDED IN PARAGRAPH (c) OF THIS SUBSECTION
25 (1), A BONDING AGENT OR OTHER PERSON WHO POSTS BOND ON A
26 CRIMINAL CASE, EITHER PRE-TRIAL OR POST-CONVICTION, FOR A
27 DEFENDANT WHO IS DETERMINED TO BE ILLEGALLY PRESENT IN THE

1 COUNTRY SHALL NOT BE ENTITLED TO RECOVER THE POSTED BOND OR FEES
2 IF THE DEFENDANT IS REMOVED FROM THE COUNTRY, AND THE BOND OR
3 FEES SHALL BE FORFEITED.

4 (c) IF IT IS DETERMINED THAT A DEFENDANT IS ILLEGALLY PRESENT
5 IN THE COUNTRY AFTER A BAIL BOND IS POSTED, THE JAIL SHALL RETURN
6 ALL DOCUMENTS CONCERNING THE DEFENDANT THAT ARE SIGNED BY THE
7 BAIL BONDING AGENT TO THE AGENT, AND THE AGENT SHALL RETURN THE
8 FEES COLLECTED PURSUANT TO SECTION 12-7-108 (7), C.R.S.

9 (2) THE BONDS AND FEES FORFEITED PURSUANT TO SUBSECTION (1)
10 OF THIS SECTION SHALL BE CREDITED TO THE CAPITAL CONSTRUCTION
11 FUND CREATED IN SECTION 24-75-302, C.R.S., FOR APPROPRIATION TO THE
12 CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116,
13 C.R.S., FOR THE PURPOSE OF PRISON BED CONSTRUCTION.

14 **SECTION 2.** Part 1 of article 1 of title 17, Colorado Revised
15 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
16 read:

17 **17-1-163. Appropriation to comply with section 2-2-703 - HB**
18 **07-1040.** (1) PURSUANT TO SECTION 2-2-703, C.R.S., THE FOLLOWING
19 STATUTORY APPROPRIATIONS, OR SO MUCH THEREOF AS MAY BE
20 NECESSARY, ARE MADE IN ORDER TO IMPLEMENT H.B. 07-1040, ENACTED
21 AT THE FIRST REGULAR SESSION OF THE SIXTY-SIXTH GENERAL ASSEMBLY:

22 (a) FOR THE FISCAL YEAR BEGINNING JULY 1, 2007, IN ADDITION
23 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED FROM
24 MONEYS CREDITED PURSUANT TO SECTION 16-3-503 (2), C.R.S., TO THE
25 CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO
26 THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION
27 17-1-116, THE SUM OF ONE MILLION ONE HUNDRED TWENTY-SIX

1 THOUSAND FOUR HUNDRED EIGHTY-FIVE DOLLARS (\$1,126,485).

2 (b) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2008, IN
3 ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY
4 APPROPRIATED, FROM MONEYS CREDITED PURSUANT TO SECTION 16-3-503
5 (2), C.R.S., TO THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION
6 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND
7 CREATED IN SECTION 17-1-116, THE SUM OF SEVEN HUNDRED THOUSAND
8 NINE HUNDRED TWENTY-FOUR DOLLARS (\$700,924).

9 (II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2008, IN ADDITION
10 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED FROM
11 MONEYS CREDITED TO THE CAPITAL CONSTRUCTION FUND CREATED IN
12 SECTION 24-75-302, C.R.S., PURSUANT TO SECTION 16-3-503 (2) C.R.S.,
13 TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION
14 17-1-116, THE SUM OF TWO HUNDRED FORTY-EIGHT THOUSAND EIGHT
15 HUNDRED TWENTY-THREE DOLLARS (\$248,823), WHICH AMOUNT IS
16 FURTHER APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS.

17 (c) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2009, IN ADDITION
18 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM
19 MONEYS CREDITED PURSUANT TO SECTION 16-3-503 (2), C.R.S., TO THE
20 CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO
21 THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION
22 17-1-116, THE SUM OF THREE HUNDRED SEVENTY-FIVE THOUSAND FOUR
23 HUNDRED NINETY-FIVE DOLLARS (\$375,495).

24 (II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2009, IN ADDITION
25 TO ANY OTHER APPROPRIATION, FROM MONEYS CREDITED TO THE CAPITAL
26 CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., PURSUANT
27 TO SECTION 16-3-503 (2) C.R.S., TO THE CORRECTIONS EXPANSION

1 RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF FOUR
2 HUNDRED TWO THOUSAND SEVEN HUNDRED SEVENTY DOLLARS
3 (\$402,770), WHICH AMOUNT IS FURTHER APPROPRIATED TO THE
4 DEPARTMENT OF CORRECTIONS.

5 (d) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2010, IN
6 ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY
7 APPROPRIATED, FROM MONEYS CREDITED PURSUANT TO SECTION 16-3-503
8 (2), C.R.S., TO THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION
9 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND
10 CREATED IN SECTION 17-1-116, THE SUM OF FIFTY THOUSAND SIXTY-SIX
11 DOLLARS (\$50,066).

12 (II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2010, IN ADDITION
13 TO ANY OTHER APPROPRIATION, FROM MONEYS CREDITED TO THE CAPITAL
14 CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., PURSUANT
15 TO SECTION 16-3-503 (2) C.R.S., TO THE CORRECTIONS EXPANSION
16 RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF FOUR
17 HUNDRED EIGHTY-FIVE THOUSAND FIVE HUNDRED THIRTY-ONE DOLLARS
18 (\$485,531), WHICH AMOUNT IS FURTHER APPROPRIATED TO THE
19 DEPARTMENT OF CORRECTIONS.

20 (e) FOR THE FISCAL YEAR BEGINNING JULY 1, 2011, IN ADDITION
21 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED FROM
22 MONEYS CREDITED TO THE CAPITAL CONSTRUCTION FUND CREATED IN
23 SECTION 24-75-302, C.R.S., PURSUANT TO SECTION 16-3-503 (2) C.R.S.,
24 TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION
25 17-1-116, THE SUM OF FOUR HUNDRED NINETY-SIX THOUSAND FIVE
26 HUNDRED SIXTY-SIX DOLLARS (\$496,566), WHICH AMOUNT IS FURTHER
27 APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS.

1 **SECTION 3. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety.