

**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. Legislative declaration.** (1) The general assembly
3 hereby finds that often when a person who is in the country illegally is
4 arrested, the person is removed from this country prior to any disposition
5 of the criminal charges and those charges are dismissed. If that same
6 person returns to this country and commits additional crimes, there is no
7 record of the charge that resulted in the previous removal when the person
8 is arrested.

9 (2) Therefore by enacting part 5 of article 3 of title 16, the general
10 assembly intends to provide a record for all criminal charges against a
11 person who is removed from this country by requiring that those cases not
12 be dismissed and that a warrant be issued.

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

15 **PART 5**

16 **WARRANTS AND BONDS FOR PERSONS ILLEGALLY**
17 **IN THE COUNTRY**

18 **16-3-501. Warrants issued for persons illegally in the country.**

19 (1) IF A PERSON HAS POSTED A BOND IN A CRIMINAL CASE, AT ANY STAGE
20 OF A CRIMINAL PROCEEDING, AND THE PERSON IS RELEASED TO THE
21 UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT AGENCY, THE
22 COURT SHALL ISSUE A WARRANT AND THE COURT SHALL SET THE AMOUNT

1 OF THE BOND ON THE WARRANT, AND THE WARRANT SHALL BE ENTERED
2 IN THE COLORADO CRIME INFORMATION CENTER AND THE NATIONAL
3 CRIME INFORMATION CENTER DATABASES, COMMANDING THE ARREST OF
4 THE PERSON WHEN CONTACTED ANYWHERE WITHIN THE UNITED STATES.
5 THE CRIMINAL CASE SHALL REMAIN ACTIVE FOR AN INDEFINITE PERIOD OF
6 TIME; EXCEPT THAT THE CASE MAY BE DISMISSED UPON A MOTION BY THE
7 DISTRICT ATTORNEY.

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

10 **16-3-502. No dismissal of cases against persons illegally in the**
11 **country.** (1) A COURT SHALL NOT DISMISS CRIMINAL CHARGES AGAINST
12 A PERSON BECAUSE THE PERSON HAS BEEN REMOVED OR IS FACING
13 REMOVAL FROM THE UNITED STATES PRIOR TO A CONVICTION OR OTHER
14 DISPOSITION OF ALL CRIMINAL CHARGES AGAINST THE PERSON; EXCEPT
15 THAT THE COURT MAY DISMISS A CASE UPON A MOTION OF THE DISTRICT
16 ATTORNEY.

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

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

25 **16-3-503. Bonds recovered for persons illegally present in the**
26 **country.** (1) (a) WHEN A LAW ENFORCEMENT AGENCY HOLDING A
27 DEFENDANT DETERMINES THAT THERE IS PROBABLE CAUSE, BASED ON THE

1 DEFENDANT'S INABILITY TO PRODUCE ONE OF THE IDENTIFYING
2 DOCUMENTS LISTED IN SUBSECTION (3) OF THIS SECTION, THAT THE
3 DEFENDANT IS LIKELY ILLEGALLY PRESENT IN THE UNITED STATES, THE
4 LAW ENFORCEMENT AGENCY SHALL NOTIFY THE DEFENDANT'S BAIL
5 BONDING AGENT IN WRITING BEFORE THE BOND IS POSTED. PRIOR TO
6 POSTING A BOND, A BONDING AGENT OR OTHER PERSON SHALL
7 EXECUTE A WAIVER THAT STATES THE AGENT OR PERSON UNDERSTANDS
8 THAT THE BOND OR FEES SHALL BE FORFEITED IF THE DEFENDANT IS
9 REMOVED FROM THE COUNTRY.

10 (b) EXCEPT AS PROVIDED IN PARAGRAPH (a) OF THIS SUBSECTION
11 (1), A BONDING AGENT OR OTHER PERSON WHO POSTS BOND ON A
12 CRIMINAL CASE, EITHER PRE-TRIAL OR POST-CONVICTION, FOR A
13 DEFENDANT WHO IS DETERMINED TO BE ILLEGALLY PRESENT IN THE
14 COUNTRY SHALL NOT BE ENTITLED TO RECOVER THE POSTED BOND OR FEES
15 IF THE DEFENDANT IS REMOVED FROM THE COUNTRY, AND THE BOND OR
16 FEES SHALL BE FORFEITED.

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

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

27 (3) FOR PURPOSES OF THIS SECTION, AN IDENTIFYING DOCUMENT

1 INCLUDES THE FOLLOWING:

2 (a) A CERTIFIED BIRTH CERTIFICATE ISSUED WITHIN THE UNITED
3 STATES AND AN IDENTIFICATION CARD WITH A PHOTOGRAPH;

4 (b) A VALID MILITARY IDENTIFICATION CARD ISSUED BY THE
5 UNITED STATES GOVERNMENT;

6 (c) A VALID MILITARY DEPENDENT'S IDENTIFICATION CARD ISSUED
7 BY THE UNITED STATES GOVERNMENT;

8 (d) A VALID NATIVE AMERICAN TRIBAL IDENTIFICATION
9 DOCUMENT WITH A PHOTOGRAPH;

10 (e) A CERTIFICATE OF UNITED STATES CITIZENSHIP, FORM N-560
11 OR N-561;

12 (f) A CERTIFICATE OF NATURALIZATION, FORM N-550 OR N-570;

13 (g) A PASSPORT ISSUED BY THE UNITED STATES GOVERNMENT;

14 (h) A VALID FOREIGN PASSPORT SHOWING LAWFUL PRESENCE IN
15 THE UNITED STATES;

16 (i) A PERMANENT RESIDENT CARD OR ALIEN REGISTRATION
17 RECEIPT CARD WITH PHOTOGRAPH, FORM I-551;

18 (j) AN UNEXPIRED TEMPORARY RESIDENT CARD, FORM I-688;

19 (k) AN UNEXPIRED EMPLOYMENT AUTHORIZATION CARD, FORM
20 I-688A;

21 (l) AN UNEXPIRED REENTRY PERMIT, FORM I-327;

22 (m) AN UNEXPIRED REFUGEE TRAVEL DOCUMENT, FORM I-571; OR

23 (n) AN UNEXPIRED EMPLOYMENT AUTHORIZATION DOCUMENT,
24 FORM I-688A.

25 **SECTION 3.** Part 1 of article 1 of title 17, Colorado Revised
26 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
27 read:

1 **17-1-163. Appropriation to comply with section 2-2-703 - HB**

2 **07-1040.** (1) PURSUANT TO SECTION 2-2-703, C.R.S., THE FOLLOWING
3 STATUTORY APPROPRIATIONS, OR SO MUCH THEREOF AS MAY BE
4 NECESSARY, ARE MADE IN ORDER TO IMPLEMENT H.B. 07-1040, ENACTED
5 AT THE FIRST REGULAR SESSION OF THE SIXTY-SIXTH GENERAL ASSEMBLY:

6 (a) FOR THE FISCAL YEAR BEGINNING JULY 1, 2007, IN ADDITION
7 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED FROM
8 MONEYS CREDITED PURSUANT TO SECTION 16-3-503 (2), C.R.S., TO THE
9 CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO
10 THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION
11 17-1-116, THE SUM OF ONE MILLION ONE HUNDRED TWENTY-SIX
12 THOUSAND FOUR HUNDRED EIGHTY-FIVE DOLLARS (\$1,126,485).

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

20 (II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2008, 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 TWO HUNDRED FORTY-EIGHT THOUSAND EIGHT
26 HUNDRED TWENTY-THREE DOLLARS (\$248,823), WHICH AMOUNT IS
27 FURTHER APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS.

1 (c) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2009, IN ADDITION
2 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM
3 MONEYS CREDITED PURSUANT TO SECTION 16-3-503 (2), C.R.S., TO THE
4 CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO
5 THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION
6 17-1-116, THE SUM OF THREE HUNDRED SEVENTY-FIVE THOUSAND FOUR
7 HUNDRED NINETY-FIVE DOLLARS (\$375,495).

8 (II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2009, IN ADDITION
9 TO ANY OTHER APPROPRIATION, FROM MONEYS CREDITED TO THE CAPITAL
10 CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., PURSUANT
11 TO SECTION 16-3-503 (2) C.R.S., TO THE CORRECTIONS EXPANSION
12 RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF FOUR
13 HUNDRED TWO THOUSAND SEVEN HUNDRED SEVENTY DOLLARS
14 (\$402,770), WHICH AMOUNT IS FURTHER APPROPRIATED TO THE
15 DEPARTMENT OF CORRECTIONS.

16 (d) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2010, IN
17 ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY
18 APPROPRIATED, FROM MONEYS CREDITED PURSUANT TO SECTION 16-3-503
19 (2), C.R.S., TO THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION
20 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND
21 CREATED IN SECTION 17-1-116, THE SUM OF FIFTY THOUSAND SIXTY-SIX
22 DOLLARS (\$50,066).

23 (II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2010, IN ADDITION
24 TO ANY OTHER APPROPRIATION, FROM MONEYS CREDITED TO THE CAPITAL
25 CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., PURSUANT
26 TO SECTION 16-3-503 (2) C.R.S., TO THE CORRECTIONS EXPANSION
27 RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF FOUR

1 HUNDRED EIGHTY-FIVE THOUSAND FIVE HUNDRED THIRTY-ONE DOLLARS
2 (\$485,531), WHICH AMOUNT IS FURTHER APPROPRIATED TO THE
3 DEPARTMENT OF CORRECTIONS.

4 (e) FOR THE FISCAL YEAR BEGINNING JULY 1, 2011, IN ADDITION
5 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED FROM
6 MONEYS CREDITED TO THE CAPITAL CONSTRUCTION FUND CREATED IN
7 SECTION 24-75-302, C.R.S., PURSUANT TO SECTION 16-3-503 (2) C.R.S.,
8 TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION
9 17-1-116, THE SUM OF FOUR HUNDRED NINETY-SIX THOUSAND FIVE
10 HUNDRED SIXTY-SIX DOLLARS (\$496,566), WHICH AMOUNT IS FURTHER
11 APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS.

12 **SECTION 4. Accountability.** Two years after this act becomes
13 law and in accordance with section 2-2-1201, Colorado Revised Statutes,
14 the legislative service agencies of the Colorado General Assembly shall
15 conduct a post-enactment review of the implementation of this act
16 utilizing the information contained in the legislative declaration set forth
17 in section 1 of this act.

18 **SECTION 5. Safety clause.** The general assembly hereby finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, and safety.