

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

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 07-0522.01 Michael Dohr

HOUSE BILL 07-1040

HOUSE SPONSORSHIP

Stephens,

SENATE SPONSORSHIP

Kopp,

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 AND REQUIRING A POST-ENACTMENT**
104 **REVIEW OF THE IMPLEMENTATION OF THIS ACT.**

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

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.

HOUSE
Amended 2nd Reading
April 30, 2007

posted a bond is released to the immigration and customs enforcement agency. Requires that a defendant arrested on a no-bond warrant pursuant 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 the 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, Colorado
10 Revised Statutes, the general assembly intends to provide a record for all
11 criminal charges against a person who is removed from this country by
12 requiring that the cases not 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

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

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

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

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

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

27 **16-3-503. Bonds recovered for persons illegally present in the**

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

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

19 (c) IF IT IS DETERMINED THAT A DEFENDANT IS ILLEGALLY PRESENT
20 IN THE COUNTRY AFTER A BAIL BOND IS POSTED, THE JAIL OR COURT SHALL
21 RETURN ALL DOCUMENTS CONCERNING THE DEFENDANT THAT ARE SIGNED
22 BY THE BAIL BONDING AGENT TO THE AGENT, AND THE AGENT SHALL
23 RETURN THE FEES COLLECTED PURSUANT TO SECTION 12-7-108 (7), C.R.S.,
24 TO THE COURT FOR FORFEITURE PURSUANT TO SUBSECTION (2) OF THIS
25 SECTION.

26 (2) THE BONDS AND FEES FORFEITED PURSUANT TO SUBSECTION (1)
27 OF THIS SECTION SHALL BE CREDITED TO THE CAPITAL CONSTRUCTION

1 FUND CREATED IN SECTION 24-75-302, C.R.S., FOR APPROPRIATION TO THE
2 CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116,
3 C.R.S., FOR THE PURPOSE OF PRISON BED CONSTRUCTION AND PRISON
4 OPERATIONS.

5 (3) FOR PURPOSES OF THIS SECTION, AN IDENTIFYING DOCUMENT
6 INCLUDES THE FOLLOWING:

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

9 (b) A VALID MILITARY IDENTIFICATION CARD ISSUED BY THE
10 UNITED STATES GOVERNMENT;

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

13 (d) A VALID NATIVE AMERICAN TRIBAL IDENTIFICATION
14 DOCUMENT WITH A PHOTOGRAPH;

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

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

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

19 (h) A VALID FOREIGN PASSPORT SHOWING LAWFUL PRESENCE IN
20 THE UNITED STATES;

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

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

24 (k) AN UNEXPIRED EMPLOYMENT AUTHORIZATION CARD, FORM
25 I-688A;

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

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

1 (n) AN UNEXPIRED EMPLOYMENT AUTHORIZATION DOCUMENT,
2 FORM I-688A.

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

6 **17-1-163. Appropriation to comply with section 2-2-703 - HB**
7 **07-1040.** (1) PURSUANT TO SECTION 2-2-703, C.R.S., THE FOLLOWING
8 STATUTORY APPROPRIATIONS, OR SO MUCH THEREOF AS MAY BE
9 NECESSARY, ARE MADE IN ORDER TO IMPLEMENT H.B. 07-1040, ENACTED
10 AT THE FIRST REGULAR SESSION OF THE SIXTY-SIXTH GENERAL ASSEMBLY:

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

18 (b) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2008, IN
19 ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY
20 APPROPRIATED, FROM MONEYS CREDITED PURSUANT TO SECTION 16-3-503
21 (2), C.R.S., TO THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION
22 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND
23 CREATED IN SECTION 17-1-116, THE SUM OF SEVEN HUNDRED THOUSAND
24 NINE HUNDRED TWENTY-FOUR DOLLARS (\$700,924).

25 (II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2008, IN ADDITION
26 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM
27 MONEYS CREDITED PURSUANT TO SECTION 16-3-503 (2), C.R.S., TO THE

1 CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO
2 THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION
3 17-1-116, THE SUM OF TWO HUNDRED FORTY-EIGHT THOUSAND EIGHT
4 HUNDRED TWENTY-THREE DOLLARS (\$248,823), WHICH AMOUNT IS
5 FURTHER APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS.

6 (c) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2009, 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 THREE HUNDRED SEVENTY-FIVE THOUSAND FOUR
12 HUNDRED NINETY-FIVE DOLLARS (\$375,495).

13 (II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2009, IN ADDITION
14 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM
15 MONEYS CREDITED PURSUANT TO SECTION 16-3-503 (2), C.R.S., TO THE
16 CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO
17 THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION
18 17-1-116, THE SUM OF FOUR HUNDRED TWO THOUSAND SEVEN HUNDRED
19 SEVENTY DOLLARS (\$402,770), WHICH AMOUNT IS FURTHER
20 APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS.

21 (d) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2010, IN
22 ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY
23 APPROPRIATED, FROM MONEYS CREDITED PURSUANT TO SECTION 16-3-503
24 (2), C.R.S., TO THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION
25 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND
26 CREATED IN SECTION 17-1-116, THE SUM OF FIFTY THOUSAND SIXTY-SIX
27 DOLLARS (\$50,066).

1 (II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2010, 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 FOUR HUNDRED EIGHTY-FIVE THOUSAND FIVE
7 HUNDRED THIRTY-ONE DOLLARS (\$485,531), WHICH AMOUNT IS FURTHER
8 APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS.

9 (e) FOR THE FISCAL YEAR BEGINNING JULY 1, 2011, 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 FOUR HUNDRED NINETY-SIX THOUSAND FIVE
15 HUNDRED SIXTY-SIX DOLLARS (\$496,566), WHICH AMOUNT IS FURTHER
16 APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS.

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

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