

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 07-1040

BY REPRESENTATIVE(S) Stephens, Cadman, Gardner B., Gibbs, Hicks, Jahn, Kerr J., King, Labuda, Lambert, Looper, Lundberg, Massey, Merrifield, Mitchell V., Rice, Roberts, Rose, Summers, Todd, Vaad, Balmer, Buescher, Liston, Marostica, May M., McNulty, Romanoff, Swalm, White, and Witwer;
also SENATOR(S) Kopp, Brophy, Johnson, McElhany, Mitchell S., Penry, Renfroe, Shaffer, Spence, Ward, Wiens, and Williams.

CONCERNING LEGAL PROCESS FOR PERSONS WHO ARE NOT LEGALLY PRESENT IN THIS COUNTRY, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH AND REQUIRING A POST-ENACTMENT REVIEW OF THE IMPLEMENTATION OF THIS ACT.

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

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

(2) Therefore, by enacting part 5 of article 3 of title 16, Colorado

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

Revised Statutes, the general assembly intends to provide a record for all criminal charges against a person who is removed from this country by requiring that the cases not be dismissed and that a warrant be issued.

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

PART 5
WARRANTS AND BONDS FOR PERSONS
ILLEGALLY IN THE COUNTRY

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

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

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

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

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

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

16-3-503. Bonds recovered for persons illegally present in the country. (1) (a) WHEN A LAW ENFORCEMENT AGENCY HOLDING A DEFENDANT CHARGED WITH A FELONY OR A CLASS 1 OR CLASS 2 MISDEMEANOR DETERMINES THAT, BASED ON INVESTIGATION, INCLUDING CONSIDERATION OF THE DEFENDANT'S INABILITY TO PRODUCE ONE OF THE IDENTIFYING DOCUMENTS LISTED IN SUBSECTION (3) OF THIS SECTION, THERE IS PROBABLE CAUSE TO FIND THAT THE DEFENDANT IS LIKELY ILLEGALLY PRESENT IN THE UNITED STATES, THE LAW ENFORCEMENT AGENCY SHALL NOTIFY THE DEFENDANT'S BAIL BONDING AGENT IN WRITING BEFORE THE BOND IS POSTED. PRIOR TO POSTING A BOND FOR A DEFENDANT CHARGED WITH A FELONY OR A CLASS 1 OR CLASS 2 MISDEMEANOR, A DEFENDANT OR PERSON OTHER THAN A PROFESSIONAL BONDING AGENT SHALL EXECUTE A WAIVER THAT STATES THE PERSON UNDERSTANDS THAT THE BOND OR FEES SHALL BE FORFEITED IF THE DEFENDANT IS REMOVED FROM THE COUNTRY.

(b) EXCEPT AS PROVIDED IN PARAGRAPH (a) OF THIS SUBSECTION (1), A DEFENDANT OR PERSON OTHER THAN A PROFESSIONAL BONDING AGENT WHO POSTS BOND ON A FELONY OR A CLASS 1 OR CLASS 2 MISDEMEANOR, EITHER PRE-TRIAL OR POST-CONVICTION, FOR A DEFENDANT WHO IS DETERMINED TO BE ILLEGALLY PRESENT IN THE COUNTRY SHALL NOT BE ENTITLED TO RECOVER THE POSTED BOND OR FEES IF THE DEFENDANT IS REMOVED FROM THE COUNTRY, AND THE BOND OR FEES SHALL BE FORFEITED.

(c) IF IT IS DETERMINED THAT A DEFENDANT IS ILLEGALLY PRESENT IN THE COUNTRY AFTER A BAIL BOND IS POSTED ON A FELONY OR A CLASS 1 OR CLASS 2 MISDEMEANOR, THE JAIL OR COURT SHALL RETURN ALL DOCUMENTS CONCERNING THE DEFENDANT THAT ARE SIGNED BY THE BAIL BONDING AGENT TO THE AGENT, AND THE AGENT SHALL RETURN THE FEES COLLECTED PURSUANT TO SECTION 12-7-108 (7), C.R.S., TO THE COURT FOR FORFEITURE PURSUANT TO SUBSECTION (2) OF THIS SECTION.

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

C.R.S., FOR THE PURPOSE OF PRISON BED CONSTRUCTION AND PRISON OPERATIONS.

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

(a) A CERTIFIED BIRTH CERTIFICATE ISSUED WITHIN THE UNITED STATES OR A STATE OR FEDERAL GOVERNMENT-ISSUED IDENTIFICATION CARD WITH A PHOTOGRAPH;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2009, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM MONEYS CREDITED PURSUANT TO SECTION 16-3-503 (2), C.R.S., TO THE

CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF THREE HUNDRED SEVENTY-FIVE THOUSAND FOUR HUNDRED NINETY-FIVE DOLLARS (\$375,495).

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

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

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

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

SECTION 4. Accountability. Two years after this act becomes

law and in accordance with section 2-2-1201, Colorado Revised Statutes, the legislative service agencies of the Colorado General Assembly shall conduct a post-enactment review of the implementation of this act utilizing the information contained in the legislative declaration set forth in section 1 of this act.

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

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Joan Fitz-Gerald
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO