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STATE OF COLORADO

REDRAFT

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Double underlining
denotes changes from
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DRAFT

LLS NO. 21-0193.01 Michael Dohr x4347

SENATE BILL

SENATE SPONSORSHIP

Lee,

HOUSE SPONSORSHIP

(None),

BILL TOPIC: "Jail Population Management Tools"

A BILL FOR AN ACT

101 **CONCERNING MEASURES TO REDUCE JAIL POPULATIONS.**

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 requires a peace officer to issue a summons and complaint in lieu of an arrest or warrant in a case for a traffic offense, petty offense, municipal offense, or misdemeanor unless arrest is statutorily required. The bill requires a peace officer to issue a summons and complaint in lieu of an arrest or warrant for a class 4, 5, or 6 felony or level 3 or 4 drug felony unless arrest is statutorily required or the arresting officer documents an objectively reasonable basis to conclude the person poses

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

a threat to the safety of another absent arrest. The bill gives a peace officer the discretion to issue a felony summons and complaint in all other cases unless arrest is statutorily required or is a crime of violence. The summons and complaint requirements do not apply if:

- The person refuses to identify himself or herself;
- The person is arrested or was convicted in the last 12 months for certain DUI offenses;
- The offense is a crime under the victim rights act and the individual poses a threat to the safety of another or is unwilling to stop the criminal behavior without arrest.

The bill limits the execution of a misdemeanor warrant to the issuing county unless arrest is statutorily required.

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 seriously harm another person. The bill requires the court to issue a personal recognizance bond in a failure to appear unless the defendant has 3 or more failures to appear in the case. The bill requires the court to issue a personal recognizance bond in a failure to comply with conditions of pretrial release or probation hearing unless it is based on a commission of a new crime. The bill changes the elements for violations of bail bond conditions.

The bill provides a sheriff with the following tools to manage jail populations:

- Authority to reserve jail beds for individuals who pose a clear risk of physical harm to others;
- Authority to adopt admission standards;
- Authority to seek standing authority from the chief judge to release categories of arrestees on personal recognizance bonds;
- Direction to regularly provide the district attorney, public defender, chief judge, and pretrial services a list of individuals held in jail pretrial on money bond, identifying the charge, the bond amount, and the length of detention;
- Authority to convene a working group to review jail population and release prisoners safely and to establish practices to keep jail population low;
- Authority to provide time credit to facilitate early release of prisoners;
- Authority to work collaboratively with a local behavioral health provider or substance abuse treatment provider to provide behavioral health or substance abuse resources in the community rather than detaining a person in the county jail; and
- Authority to work to identify increased opportunities for

diversion from jail, particularly for individuals arrested related to homelessness, mental health issues, or substance abuse.

Currently, there are certain DUI offenses for which the court is prohibited from using certain sentencing alternatives. The bill removes those prohibitions.

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
3 follows:

4 **16-2-104. Issuance of summons and complaint.** (1) (a) ~~A~~
5 ~~summons and complaint may be issued by any peace officer for an~~
6 ~~offense constituting a misdemeanor, or a petty offense committed in his~~
7 ~~presence or, if not committed in his presence, which he has probable~~
8 ~~cause to believe was committed and probable cause to believe was~~
9 ~~committed by the person charged~~ UNLESS AN ARREST FOR AN OFFENSE IS
10 STATUTORILY REQUIRED, A PEACE OFFICER SHALL NOT ARREST A PERSON
11 IF THE OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT THE PERSON HAS
12 COMMITTED A TRAFFIC OFFENSE, PETTY OFFENSE, MUNICIPAL OFFENSE, OR
13 MISDEMEANOR CRIME OR OFFENSE. THE PEACE OFFICER INSTEAD MAY
14 ISSUE A SUMMONS AND COMPLAINT TO THE PERSON.

15 (b) (I) UNLESS AN ARREST FOR AN OFFENSE IS STATUTORILY
16 REQUIRED OR THE ARRESTING OFFICER RECORDS IN THE ARREST
17 DOCUMENTS AN OBJECTIVELY REASONABLE BASIS TO CONCLUDE THE
18 PERSON POSES A THREAT TO THE SAFETY OF ANOTHER ABSENT CUSTODIAL
19 ARREST, A PEACE OFFICER SHALL NOT ARREST A PERSON IF THE OFFICER
20 HAS PROBABLE CAUSE TO BELIEVE THAT THE PERSON HAS COMMITTED A
21 CLASS 4, 5, OR 6 FELONY OR A LEVEL 3 OR 4 DRUG FELONY. THE PEACE
22 OFFICER INSTEAD MAY ISSUE A SUMMONS AND COMPLAINT TO THE PERSON.

1 (II) A PEACE OFFICER HAS THE DISCRETION TO ISSUE A SUMMONS
2 AND COMPLAINT FOR ANY OTHER FELONY OR DRUG FELONY UNLESS AN
3 ARREST FOR THE OFFENSE IS STATUTORILY REQUIRED OR THE OFFENSE IS
4 A CRIME OF VIOLENCE, AS DESCRIBED IN SECTION 18-1.3-406 (2).

5 (c) THE MANDATORY ISSUANCE OF A SUMMONS AND COMPLAINT
6 REQUIRED BY THIS SUBSECTION (1) DOES NOT APPLY IF:

7 (I) THE PERSON REFUSES TO IDENTIFY HIMSELF OR HERSELF;

8 (II) THE PERSON IS ARRESTED FOR A VIOLATION OF SECTION
9 42-4-1301 AND THE PERSON WAS CONVICTED FOR A VIOLATION OF SECTION
10 42-4-1301 IN THE PREVIOUS TWELVE MONTHS; OR

11 (III) THE OFFENSE IS A CRIME AS DEFINED IN SECTION 24-4.1-302
12 (1), AND:

13 (A) THE ARRESTING OFFICER RECORDS IN THE ARREST DOCUMENTS
14 AN OBJECTIVELY REASONABLE BASIS TO CONCLUDE THE PERSON POSES A
15 THREAT TO THE SAFETY OF ANOTHER ABSENT CUSTODIAL ARREST; OR

16 (B) THE ARRESTING OFFICER RECORDS IN THE ARREST DOCUMENTS
17 AN OBJECTIVELY REASONABLE BASIS TO CONCLUDE THE PERSON HAS
18 INDICATED A CLEAR UNWILLINGNESS TO CEASE AND DESIST IN CRIMINAL
19 BEHAVIOR ABSENT CUSTODIAL ARREST.

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

26 **SECTION 2.** In Colorado Revised Statutes, 16-3-102, **add** (2) as
27 follows:

1 **16-3-102. Arrest by peace officer.** (2) A PEACE OFFICER MAY
2 ONLY EXECUTE AN ARREST WARRANT FOR A MISDEMEANOR OFFENSE,
3 PETTY OFFENSE, MUNICIPAL OFFENSE, OR TRAFFIC OFFENSE IN THE COUNTY
4 WHERE THE WARRANT WAS ISSUED UNLESS ARREST IS STATUTORILY
5 REQUIRED.

6 **SECTION 3.** In Colorado Revised Statutes, 16-4-113, **add** (3) as
7 follows:

8 **16-4-113. Type of bond in certain cases.** (3) (a) EXCEPT AS
9 PROVIDED FOR IN SUBSECTION (2) OF THIS SECTION, FOR A DEFENDANT
10 CHARGED WITH A CLASS 4, 5, OR 6 FELONY; A LEVEL 3 OR 4 DRUG OFFENSE;
11 A MISDEMEANOR; OR A MUNICIPAL OFFENSE, A COURT SHALL NOT IMPOSE
12 A MONETARY CONDITION OF RELEASE UNLESS THE COURT FINDS ON THE
13 RECORD THAT THERE IS A SUBSTANTIAL RISK THAT THE DEFENDANT WILL
14 FLEE PROSECUTION OR SERIOUSLY HARM ANOTHER PERSON AND NO OTHER
15 CONDITION OF RELEASE CAN REASONABLY MITIGATE THE RISK.

16 (b) WHEN A DEFENDANT APPEARS BEFORE THE COURT BASED ON
17 A FAILURE TO APPEAR WARRANT, THE COURT SHALL GRANT THE
18 DEFENDANT A PERSONAL RECOGNIZANCE BOND UNLESS THE DEFENDANT
19 HAS THREE OR MORE FAILURES TO APPEAR IN THE CASE.

20 (c) WHEN A DEFENDANT OR PROBATIONER APPEARS BEFORE THE
21 COURT ON A FAILURE TO COMPLY WITH CONDITIONS OF RELEASE OR
22 PROBATION WARRANT, THE COURT SHALL GRANT THE DEFENDANT OR
23 PROBATIONER A PERSONAL RECOGNIZANCE BOND UNLESS THE FAILURE TO
24 COMPLY IS BASED ON THE COMMISSION OF A NEW CRIME.

25 **SECTION 4.** In Colorado Revised Statutes, 18-8-212, **amend** (1)
26 and (2); and **add** (5) as follows:

27 **18-8-212. Violation of bail bond conditions.** (1) ~~A person who~~

1 ~~is released on bail bond of whatever kind, and either before, during, or~~
2 ~~after release is accused by complaint, information, indictment, or the~~
3 ~~filing of a delinquency petition of any felony arising from the conduct for~~
4 ~~which he was arrested, commits a class 6 felony if he knowingly fails to~~
5 ~~appear for trial or other proceedings in the case in which the bail bond~~
6 ~~was filed or if he knowingly violates the conditions of the bail bond~~ A
7 PERSON WHO IS CHARGED WITH ANY FELONY AND IS RELEASED ON BOND
8 COMMITS A CLASS 6 FELONY IF THE PERSON KNOWINGLY FAILS TO APPEAR
9 IN THE FELONY CASE FOR WHICH THE PERSON IS ON BOND WITH THE INTENT
10 TO AVOID PROSECUTION.

11 (2) ~~A person who is released on bail bond of whatever kind, and~~
12 ~~either before, during, or after release is accused by complaint,~~
13 ~~information, indictment, or the filing of a delinquency petition of any~~
14 ~~misdemeanor arising from the conduct for which he was arrested,~~
15 ~~commits a class 3 misdemeanor if he knowingly fails to appear for trial~~
16 ~~or other proceedings in the case in which the bail bond was filed or if he~~
17 ~~knowingly violates the conditions of the bail bond~~ A PERSON WHO IS
18 RELEASED ON BOND AND IS CHARGED WITH ANY FELONY OR MISDEMEANOR
19 ARISING FROM THE CONDUCT FOR WHICH THE PERSON WAS ARRESTED
20 COMMITS A CLASS 3 MISDEMEANOR IF THE PERSON INTENTIONALLY FAILS
21 TO APPEAR IN THE CASE FOR ANY PROCEEDINGS FOR WHICH VICTIMS OR
22 WITNESSES HAVE APPEARED IN COURT.

23 (5) SUBSECTIONS (1) AND (2) OF THIS SECTION DO NOT APPLY TO
24 A PERSON DESCRIBED IN SECTION 16-4-113 (2).

25 **SECTION 5.** In Colorado Revised Statutes, **add** 30-10-528 as
26 follows:

27 **30-10-528. Sheriff - jail population management.** (1) THE

1 GENERAL ASSEMBLY ENCOURAGES SHERIFFS TO ACTIVELY MANAGE THEIR
2 JAIL POPULATIONS IN ORDER TO KEEP THE POPULATION AS LOW AS
3 POSSIBLE WHILE MAINTAINING COMMUNITY SAFETY _____. IN ORDER TO
4 MANAGE A COUNTY'S JAIL POPULATION, A SHERIFF MAY AND IS
5 ENCOURAGED TO:

6 (a) RESERVE JAIL BEDS FOR INDIVIDUALS WHO POSE A CLEAR RISK
7 OF PHYSICAL HARM TO OTHERS;

8 (b) ESTABLISH OFFENSE-BASED ADMISSION STANDARDS TO LIMIT
9 JAIL ADMISSIONS. THE STANDARDS MUST NOT DENY ADMISSION TO A
10 PERSON FOR WHOM ARREST IS STATUTORILY REQUIRED OR TO A PERSON
11 WHO POSES AN IMMEDIATE AND SUBSTANTIAL RISK TO THE PHYSICAL
12 SAFETY OF OTHERS;

13 (c) SEEK STANDING AUTHORITY FROM THE CHIEF JUDGE TO
14 RELEASE CATEGORIES OF ARRESTEES ON PERSONAL RECOGNIZANCE
15 BONDS;

16 (d) REGULARLY PROVIDE THE DISTRICT ATTORNEY, PUBLIC
17 DEFENDER, CHIEF JUDGE, AND PRETRIAL SERVICES A LIST OF INDIVIDUALS
18 HELD IN JAIL PRETRIAL ON MONEY BOND, IDENTIFYING THE CHARGE, THE
19 BOND AMOUNT, AND THE LENGTH OF DETENTION;

20 (e) CONVENE A WORKING GROUP TO REGULARLY MEET TO REVIEW
21 THE JAIL POPULATION, IDENTIFY INDIVIDUALS WHO MAY BE SAFELY
22 RELEASED, AND ESTABLISH PRACTICES TO KEEP JAIL POPULATIONS AS LOW
23 AS POSSIBLE WHILE PROTECTING COMMUNITY SAFETY. IF THE SHERIFF
24 CONVENES A WORKING GROUP, THE SHERIFF SHALL INCLUDE AT LEAST
25 REPRESENTATIVES OF THE DISTRICT ATTORNEY, PUBLIC DEFENDER, CHIEF
26 JUDGE, AND PRETRIAL SERVICES; A COMMUNITY-BASED VICTIM ADVOCATE,
27 IF AVAILABLE; AND, WHEN POSSIBLE, LOCAL BEHAVIORAL HEALTH

1 TREATMENT PROVIDERS OR CRISIS SERVICE PROVIDERS.

2 (f) AWARD TIME CREDITS PURSUANT TO SECTION 17-26-109 IN
3 ORDER TO FACILITATE THE EARLY RELEASE OF A PERSON SENTENCED TO
4 JAIL;

5 (g) WORK COLLABORATIVELY WITH A LOCAL BEHAVIORAL HEALTH
6 PROVIDER OR SUBSTANCE ABUSE TREATMENT PROVIDER TO PROVIDE
7 BEHAVIORAL HEALTH OR SUBSTANCE ABUSE RESOURCES IN THE
8 COMMUNITY RATHER THAN DETAINING A PERSON IN THE COUNTY JAIL;
9 AND

10 (h) WORK _____ TO IDENTIFY INCREASED OPPORTUNITIES FOR
11 DIVERSION FROM JAIL, PARTICULARLY FOR INDIVIDUALS ARRESTED
12 RELATED TO HOMELESSNESS, MENTAL HEALTH ISSUES, OR SUBSTANCE
13 ABUSE.

14 **SECTION 6.** In Colorado Revised Statutes, 42-4-1307, **amend**
15 (5)(b), (6)(a)(I), and (6.5)(b) as follows:

16 **42-4-1307. Penalties for traffic offenses involving alcohol and**
17 **drugs - legislative declaration - definitions - repeal. (5) Second**
18 **offenses.** (b) If a person is convicted of DUI, DUI per se, or DWAI and
19 the violation occurred less than five years after the date of a previous
20 violation for which the person was convicted of DUI, DUI per se, DWAI,
21 vehicular homicide pursuant to section 18-3-106 (1)(b), ~~C.R.S.~~, vehicular
22 assault pursuant to section 18-3-205 (1)(b), ~~C.R.S.~~, aggravated driving
23 with a revoked license pursuant to section 42-2-206 (1)(b)(I)(A) or
24 (1)(b)(I)(B), as that crime existed before August 5, 2015, or driving while
25 the person's driver's license was under restraint pursuant to section
26 42-2-138 (1)(d), the court ~~does not have~~ HAS discretion to employ any
27 sentencing alternatives described in section 18-1.3-106 ~~C.R.S.~~, during the

1 minimum period of imprisonment described in ~~subparagraph (I) of~~
2 ~~paragraph (a) of this subsection (5); except that a court may allow the~~
3 ~~person to participate in a program pursuant to section 18-1.3-106~~
4 ~~(1)(a)(II), (1)(a)(IV), or (1)(a)(V), C.R.S., only if the program is available~~
5 ~~through the county in which the person is imprisoned and only for the~~
6 ~~purpose of:~~

7 ~~(I) Continuing a position of employment that the person held at~~
8 ~~the time of sentencing for said violation;~~

9 ~~(II) Continuing attendance at an educational institution at which~~
10 ~~the person was enrolled at the time of sentencing for said violation; or~~

11 ~~(III) Participating in a court-ordered level II alcohol and drug~~
12 ~~driving safety education or treatment program, as described in section~~
13 ~~42-4-1301.3 (3)(c)(IV) SUBSECTION (5)(a)(I) OF THIS SECTION.~~

14 **(6) Third and subsequent offenses.** (a) Except as provided in
15 section 42-4-1301 (1)(a), (1)(b), and (2)(a), a person who is convicted of
16 DUI, DUI per se, or DWAI who, at the time of sentencing, has two or
17 more prior convictions of DUI, DUI per se, DWAI, vehicular homicide
18 pursuant to section 18-3-106 (1)(b), vehicular assault pursuant to section
19 18-3-205 (1)(b), aggravated driving with a revoked license pursuant to
20 section 42-2-206 (1)(b)(I)(A) or (1)(b)(I)(B), as that crime existed before
21 August 5, 2015, or driving while the person's driver's license was under
22 restraint pursuant to section 42-2-138 (1)(d) shall be punished by:

23 (I) Imprisonment in the county jail for at least sixty consecutive
24 days but no more than one year. During the mandatory sixty-day period
25 of imprisonment, the person is not eligible for deductions of ~~his or her~~
26 THE PERSON'S sentence pursuant to section 17-26-109 or for trusty
27 prisoner status pursuant to section 17-26-109 (1)(c); except that a person

1 receives credit for any time that ~~he or she~~ THE PERSON served in custody
2 for the violation prior to ~~his or her~~ THE PERSON'S conviction. During the
3 mandatory period of imprisonment, the court ~~does not have~~ HAS
4 discretion to employ any sentencing alternatives described in section
5 18-1.3-106. ~~except that the person may participate in a program pursuant~~
6 ~~to section 18-1.3-106 (1)(a)(II), (1)(a)(IV), or (1)(a)(V), C.R.S., only if~~
7 ~~the program is available through the county in which the person is~~
8 ~~imprisoned and only for the purpose of:~~

9 (A) ~~Continuing a position of employment that the person held at~~
10 ~~the time of sentencing for said violation;~~

11 (B) ~~Continuing attendance at an educational institution at which~~
12 ~~the person was enrolled at the time of sentencing for said violation; or~~

13 (C) ~~Participating in a court-ordered level II alcohol and drug~~
14 ~~driving safety education or treatment program, as described in section~~
15 ~~42-4-1301.3 (3)(c)(IV).~~

16 (6.5) **Felony offenses.** (b) If the court sentences the defendant to
17 a term of probation as provided by section 18-1.3-202, the court shall
18 order as a condition of probation one of the following:

19 (I) Require the defendant to serve at least ninety days but not more
20 than one hundred eighty days imprisonment in the county jail. During the
21 mandatory ninety-day period of imprisonment, the defendant is not
22 eligible for deductions of ~~his or her~~ THE DEFENDANT'S sentence pursuant
23 to section 17-26-109 or for trusty prisoner status pursuant to section
24 17-26-109 (1)(c); except that a defendant receives credit for any time that
25 ~~he or she~~ THE DEFENDANT served in custody for the violation prior to ~~his~~
26 ~~or her~~ THE DEFENDANT'S conviction. During this mandatory period of
27 imprisonment, the court ~~does not have~~ HAS discretion to employ any

1 sentencing alternatives described in section 18-1.3-106.

2 (II) Require the defendant to serve at least one hundred twenty
3 days but not more than two years of imprisonment in the county jail
4 through participation in a program pursuant to section 18-1.3-106
5 (1)(a)(II) or (1)(a)(IV) if the program is available through the county in
6 which the defendant is imprisoned and only for the purposes of
7 continuing a position of employment that the defendant held at the time
8 of sentencing for the violation or for continuing attendance at an
9 educational institution at which the defendant was enrolled at the time of
10 sentencing for the violation. During the mandatory
11 one-hundred-twenty-day period of imprisonment, the defendant is not
12 eligible for deductions of ~~his or her~~ THE DEFENDANT'S sentence pursuant
13 to section 17-26-109 or for trusty prisoner status pursuant to section
14 17-26-109 (1)(c); except that a defendant receives credit for any time that
15 ~~he or she~~ THE DEFENDANT served in custody for the violation prior to ~~his~~
16 ~~or her~~ THE DEFENDANT'S conviction. During this mandatory period of
17 imprisonment, the court ~~does not have~~ HAS discretion to employ any other
18 sentencing alternatives described in section 18-1.3-106. ~~except that a~~
19 ~~court may grant permission for a defendant to leave the jail to obtain~~
20 ~~medical treatment, pursuant to section 18-1.3-106 (1)(a)(V).~~

21 **SECTION 7.** In Colorado Revised Statutes, 16-5-206, **repeal**
22 (1.5) as follows:

23 **16-5-206. Summons in lieu of warrant.** (1.5) (a) ~~Except in class~~
24 ~~1, class 2, class 3, and class 4 felonies; in crimes described in section~~
25 ~~24-4.1-302 (1), C.R.S.; and in unclassified felonies punishable by a~~
26 ~~maximum penalty of more than ten years, a law enforcement officer may~~
27 ~~issue a summons commanding the appearance of the defendant in lieu of~~

1 a warrant for his or her arrest based on probable cause if:

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

5 (II) ~~There is a reasonable likelihood that the defendant will~~
6 ~~appear;~~

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

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

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

13 (b) ~~No later than ten days after a law enforcement officer issues~~
14 ~~a summons pursuant to this subsection (1.5), he or she shall deliver a copy~~
15 ~~to the court and to the office of the district attorney where jurisdiction~~
16 ~~lies.~~

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

20 <*{Do you want a safety clause or a petition clause?}*>