

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

PREAMENDED

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

LLS NO. 11-0489.01 Michael Dohr

HOUSE BILL 11-1088

HOUSE SPONSORSHIP

Barker, Brown, Gardner B., Holbert

SENATE SPONSORSHIP

Lambert,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING BOND CIRCUMSTANCES FOR DEFENDANTS WHO MAY BE**
102 **IN THE COUNTRY ILLEGALLY.**

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://www.leg.state.co.us/billsummaries>.)

Under current law, if there is probable cause to believe that a defendant is in the country illegally and he or she is charged with a felony or class 1 or 2 misdemeanor, the investigating law enforcement agency shall notify the defendant's bail bond agent. The bill changes the standard to reasonable grounds and includes situations in which a person is

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.*

arrested for a felony or class 1 or 2 misdemeanor.

Under current law, a bail bond agent is exempt from having his or her bond forfeited if the defendant is removed from the country and is exempt from signing a waiver of understanding. The bill requires the bail bond agent to execute a waiver that states he or she understands that if the defendant is removed from the country the bond is forfeited and requires the bond of the bail bond agent to be forfeited if the defendant is removed from the country.

A law enforcement agency holding a defendant for a felony or class 1 or 2 misdemeanor whom the law enforcement agency has reasonable grounds to believe is present in the country illegally must notify the district attorney and any pretrial services agency of the defendant's presumed immigration status. A court, when considering the amount of bond to set, shall consider whether there are reasonable grounds to believe the defendant is present in the country illegally.

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

2 **SECTION 1.** 16-3-503 (1), Colorado Revised Statutes, is
3 amended to read:

4 **16-3-503. Bonds recovered for persons illegally in the country.**

5 (1) (a) When a law enforcement agency holding a defendant charged
6 with OR ARRESTED FOR a felony or a class 1 or class 2 misdemeanor
7 determines that, based on investigation, including consideration of the
8 defendant's inability to produce one of the identifying documents listed
9 in subsection (3) of this section, there is probable cause to find that the
10 defendant is likely illegally present in the United States, the law
11 enforcement agency shall notify the defendant's bail bonding agent in
12 writing before the bond is posted. Prior to posting a bond for a defendant
13 charged with a felony or a class 1 or class 2 misdemeanor, a defendant or
14 OTHER person, ~~other than~~ INCLUDING a professional bonding agent, shall
15 execute a waiver that states the person understands that the bond ~~or fees~~
16 shall be forfeited if the defendant is removed from the country.

17 (b) ~~Except as provided in paragraph (a) of this subsection (1), A~~

1 defendant or OTHER person, ~~other than~~ INCLUDING a professional bonding
2 agent, who posts bond on a felony or a class 1 or class 2 misdemeanor,
3 either pretrial or post-conviction, for a defendant who is ~~determined to be~~
4 illegally present in the country shall not be entitled to recover the posted
5 bond ~~or fees~~ if the defendant is removed from the country, and the bond
6 ~~or fees~~ shall be forfeited.

7 (c) ~~If it is determined that a defendant is illegally present in the~~
8 ~~country after a bail bond is posted on a felony or a class 1 or class 2~~
9 ~~misdemeanor, the jail or court shall return all documents concerning the~~
10 ~~defendant that are signed by the bail bonding agent to the agent, and the~~
11 ~~agent shall return the fees collected pursuant to section 12-7-108 (7);~~
12 ~~C.R.S., to the court for forfeiture pursuant to subsection (2) of this~~
13 ~~section.~~

14 **SECTION 2.** Part 5 of article 3 of title 16, Colorado Revised
15 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
16 read:

17 **16-3-504. Notification to district attorney.** (1) **IF** A LAW
18 ENFORCEMENT AGENCY HOLDING A DEFENDANT CHARGED WITH OR
19 ARRESTED FOR A FELONY OR A CLASS 1 OR CLASS 2 MISDEMEANOR
20 DETERMINES **■** THAT THE DEFENDANT **MAY BE** ILLEGALLY PRESENT IN THE
21 UNITED STATES, THE LAW ENFORCEMENT AGENCY SHALL NOTIFY THE
22 DISTRICT ATTORNEY'S OFFICE AND ANY PRETRIAL SERVICES AGENCY IN A
23 TIMELY MANNER OF THE DEFENDANT'S PRESUMED IMMIGRATION STATUS.
24 NOTIFICATION TO THE DISTRICT ATTORNEY'S OFFICE AND ANY PRETRIAL
25 SERVICES AGENCY PRIOR TO THE DEFENDANT'S FIRST APPEARANCE BEFORE
26 THE COURT SHALL BE CONSIDERED TIMELY.

27 (2) IF THE DEFENDANT POSTS BOND, THE LAW ENFORCEMENT

1 AGENCY SHALL NOTIFY THE DISTRICT ATTORNEY OF THE POSTING OF THE
2 BOND PRIOR TO NOTIFYING IMMIGRATION AND CUSTOMS ENFORCEMENT
3 THAT THE DEFENDANT IS ELIGIBLE FOR RELEASE TO THEIR CUSTODY.

4

5 **SECTION 3. Act subject to petition - effective date -**
6 **applicability.** (1) This act shall take effect upon August 15, 2011;
7 except that, if a referendum petition is filed pursuant to section 1 (3) of
8 article V of the state constitution against this act or an item, section, or
9 part of this act within the ninety-day period after final adjournment of the
10 general assembly, then the act, item, section, or part shall not take effect
11 unless approved by the people at the general election to be held in
12 November 2012 and shall take effect on the date of the official
13 declaration of the vote thereon by the governor.

14 (2) The provisions of this act shall apply to offenses committed on
15 or after the applicable effective date of this act.