

First Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 11-0489.01 Michael Dohr

HOUSE BILL 11-1088

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HOUSE SPONSORSHIP

**Barker,** Brown, Gardner B., Holbert

SENATE SPONSORSHIP

**Lambert,**

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House Committees  
Judiciary

Senate Committees

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A BILL FOR AN ACT

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

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**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.

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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~~ ARE REASONABLE  
10 GROUNDS to ~~find~~ BELIEVE that the defendant is ~~likely~~ illegally present in  
11 the United States, the law enforcement agency shall notify the defendant's  
12 bail bonding agent in writing before the bond is posted. Prior to posting  
13 a bond for a defendant charged with a felony or a class 1 or class 2  
14 misdemeanor, a defendant or OTHER person, ~~other than~~ INCLUDING a  
15 professional bonding agent, shall execute a waiver that states the person  
16 understands that the bond ~~or fees~~ shall be forfeited if the defendant is  
17 removed from the country.

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

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

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

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

1 CONSIDERED TIMELY.

2 (2) IF THE DEFENDANT POSTS BOND, THE LAW ENFORCEMENT  
3 AGENCY SHALL NOTIFY THE DISTRICT ATTORNEY OF THE POSTING OF THE  
4 BOND PRIOR TO NOTIFYING IMMIGRATION AND CUSTOMS ENFORCEMENT  
5 THAT THE DEFENDANT IS ELIGIBLE FOR RELEASE TO THEIR CUSTODY.

6 **SECTION 3.** 16-4-105 (1), Colorado Revised Statutes, is  
7 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

8 **16-4-105. Selection by judge of the amount of bail and type of**  
9 **bond - criteria.** (1) In determining the amount of bail and the type of  
10 bond to be furnished by the defendant, the judge fixing the same shall  
11 consider and be governed by the following criteria:

12 (r) INFORMATION FROM A PRETRIAL SERVICES AGENCY, LAW  
13 ENFORCEMENT AGENCY, OR DISTRICT ATTORNEY THAT THERE ARE  
14 REASONABLE GROUNDS TO BELIEVE THE DEFENDANT IS ILLEGALLY  
15 PRESENT IN THE UNITED STATES, INCLUDING THE PRESENCE OF A HOLD  
16 FROM IMMIGRATION AND CUSTOMS ENFORCEMENT WHICH COULD RESULT  
17 IN THE DEFENDANT'S REMOVAL FROM THE COUNTRY PRIOR TO THE  
18 RESOLUTION OF THE CASE BEFORE THE COURT.

19 **SECTION 4. Act subject to petition - effective date -**  
20 **applicability.** (1) This act shall take effect upon August 15, 2011;  
21 except that, if a referendum petition is filed pursuant to section 1 (3) of  
22 article V of the state constitution against this act or an item, section, or  
23 part of this act within the ninety-day period after final adjournment of the  
24 general assembly, then the act, item, section, or part shall not take effect  
25 unless approved by the people at the general election to be held in  
26 November 2012 and shall take effect on the date of the official  
27 declaration of the vote thereon by the governor.

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