



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number: LLS 21-0193
Prime Sponsors: Sen. Lee
Rep. Benavidez

Date: June 16, 2021
Bill Status: Postponed Indefinitely
Fiscal Analyst: Erin Reynolds | 303-866-4146
Erin.Reynolds@state.co.us

Bill Topic: JAIL POPULATION MANAGEMENT TOOLS

**Summary of
Fiscal Impact:**

- | | |
|---|--|
| <input checked="" type="checkbox"/> State Revenue | <input type="checkbox"/> TABOR Refund |
| <input checked="" type="checkbox"/> State Expenditure | <input checked="" type="checkbox"/> Local Government |
| <input type="checkbox"/> State Transfer | <input type="checkbox"/> Statutory Public Entity |

This bill would have authorized peace officers to issue a summons and complaint for most offenses, required the court to issue a personal recognizance bond when a defendant fails to appear if certain criteria are met, and authorized sheriffs to manage their jail populations by establishing standards for admission. Beginning in FY 2021-22, the bill would have minimally reduced state revenue, increased state expenditures, and both increased and reduced local expenditures. A similar policy was adopted in Senate Bill 21-273.

Appropriation Summary: For FY 2021-22, the bill would have required an appropriation of \$52,107 to the Judicial Department.

Fiscal Note Status: The fiscal note reflects the introduced bill, as amended by the Senate Judiciary Committee. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under SB 21-062

		Budget Year FY 2021-22	Out Year FY 2022-23
Revenue		-	-
Expenditures	General Fund	\$52,107	\$92,155
	Centrally Appropriated	\$13,051	\$29,674
	Total Expenditures	\$65,158	\$121,829
	Total FTE	0.7 FTE	1.7 FTE
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

This bill authorizes peace officers to issue a summons and complaint for most offenses, requires the court to issue a personal recognizance bond when a defendant fails to appear if certain criteria are met, and authorizes sheriffs to manage their jail populations by establishing standards for admission. These provisions are described in more detail below.

Summons and complaint. The bill gives a peace officer the authority to issue a summons and complaint for most offenses, unless arrest is statutorily required or the offense is a crime of violence.

Arrest prohibitions. The bill prohibits a peace officer from subjecting a person to warrantless, detention-eligible arrest based solely on the alleged commission of a traffic offense; petty offense; municipal offense; misdemeanor offense; a class 4, 5, or 6 felony; or a level 3 or 4 drug felony unless:

- a detention-eligible arrest is statutorily required;
- the officer is unable to verify the individual's identity without the detention-eligible arrest;
- the officer has probable cause to believe the person is impaired by alcohol and has prior convictions, or a facility is unavailable and there is a safety risk absent detention-eligible arrest; or
- the offense involves a felony, a victims' rights act crime, illegal possession or use of firearm, unlawful sexual behavior, failure to register as a sex offender, an extreme risk protection order, a threat against a school, or eluding a peace officer, and the arresting officer records in the arrest documents a reasonable suspicion to conclude:
 - the person poses a threat to the safety of another absent detention-eligible arrest; or
 - the person has indicated a clear unwillingness to cease and desist in criminal behavior absent detention-eligible arrest.

These arrest prohibitions are an obligation of arresting officers. No court or sheriff is required to perform a review to ensure compliance with these provisions, and no private right of action for violations of these provisions is created, nor do these provisions provide a basis to seek dismissal or suppression of evidence in a criminal case.

"Detention-eligible arrest" is defined to mean taking a person into custody to transport them to a jail or detention facility until the person appears before a court or is released on bond. Detention-eligible arrest does not include transport of a person to a jail for the purpose of fingerprinting, photographing, DNA or blood, breath, saliva or urine testing, nor transport of a person for any other lawful purpose or to any other facility, unless the peace officer intends to have the person held in jail upon discharge from such facility.

Bond prohibitions. The bill prohibits courts from issuing monetary bonds for defendants charged with a class 4, 5, or 6 felony; a level 3 or 4 drug felony; a misdemeanor offense; or a municipal offense unless the court finds on the record that there is a substantial risk that the defendant will flee prosecution or threaten the safety of another person and no other condition of release can reasonably mitigate the risk.

When a defendant appears before the court based on a failure to appear warrant, the court must grant a personal recognizance bond unless the defendant:

- failed to appear three or more times in the case;
- failed to appear for any proceeding for which a witness was subpoenaed and appeared or for which a civilian witness was placed on call by the prosecution; or
- intentionally failed to appear for the purpose of interfering with or deterring victim or witness participation in the case.

The bill requires the court to issue a personal recognizance bond in a probation hearing for failure to comply with conditions unless:

- the violation was a failure to comply with any court-ordered treatment related to a sex offense or a crime of domestic violence, and the court finds on the record that the failure to comply poses a substantial risk to the safety of another and was not based solely on an inability to pay; or
- the defendant has already had probation revoked for failure to comply in the case.

The court maintains authority to revoke probation based on failure to comply. These provisions do not prohibit the release of a person pursuant to local pretrial release policies that require payment of a monetary condition of release prior to an individualized decision by a judge, a pretrial officer, a bonding and release commissioner, or any other judicial officer. The court maintains the authority to set monetary bond when the court finds that a defendant is likely to flee prosecution and that there are no other conditions of release that can reasonably mitigate that risk.

The bill also redefines "flee prosecution" to mean planning or attempting to intentionally evade prosecution by concealing oneself. Simple, past non-appearance in court alone is not evidence of future intent to flee prosecution. Citizenship status alone is not evidence of future intent to flee prosecution.

County jail population management. The bill authorizes sheriffs to actively manage their jail populations in order to keep the population as low as possible while maintaining community safety, including the authority to establish jail admission standards that include offense-based admission standards that limit jail admissions.

State Revenue

Currently, the Judicial Department uses cash bonds to collect outstanding fees and fines due. In FY 2019-20, the department collected \$675,000 by applying cash bonds to court-ordered obligations. As described in the State Expenditures section, the fiscal note identifies the need for additional staff to collect lost fee and fine revenue; therefore, any revenue reduction is expected to be minimal.

State Expenditures

The bill will increase costs for the Judicial Department by \$65,158 and 0.7 FTE in FY 2021-22 (half-year impact) and \$121,829 and 1.7 FTE in FY 2022-23. Costs have been prorated for the bill's effective date and the General Fund pay date shift, as shown in Table 2 and detailed further below.

Table 2
Expenditures Under SB 21-062

Cost Components	FY 2021-22	FY 2022-23
Judicial Department		
Personal Services	\$38,492	\$89,860
Operating Expenses	\$1,215	\$2,295
Capital Outlay Costs	\$12,400	-
Centrally Appropriated Costs ¹	\$13,051	\$29,674
Total	\$65,158	\$121,829
Total FTE	0.7 FTE	1.7 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Judicial Department—trial courts. The bill requires 1.1 FTE clerk staff to perform intake paperwork and compliance checks that had been previously performed by law enforcement and jail staff. FTE amount is based on the assumption that 5 minutes of additional workload will be required for approximately 26,245 cases per year. In addition, the bill requires 0.3 FTE clerk staff to perform fingerprinting for approximately 18,800 cases per year at 2 minutes per case.

- *Assumptions.* Caseload used for this estimate uses a two-year average and excludes cases under the Victim's Rights Act; cases involving a crime of violence, including domestic violence; and cases where a cash bond was set post-sentence. Of the remaining cases, the estimate includes 25 percent of felony cases and 50 percent of misdemeanor cases, and removes an extra 10 percent of those cases to account for unique circumstances where arrests may continue to occur. Fingerprinting caseload is further reduced to subtract offenses that do not require fingerprinting.

Judicial Department—collections unit. Due to the reduced use of cash bonds, the Judicial Department requires 0.3 FTE collections staff to facilitate the collection of court-related debt. The fiscal note includes this staff so that the Judicial Department is able to meet its statutory obligation to collect fine and fee revenue.

- *Assumptions.* In FY 2019-20, there were 3,798 cases where cash bonds were used to pay court-ordered obligations for which this bill will likely remove the cash bond. Workload impact assumes 33 percent of these will no longer be assessed a cash bond and that each case averages 30 minutes of collection time.

Judicial Department—hearing increase. Workload and costs may increase in trial courts and the offices of the Public Defender and Alternate Defense Counsel to the extent the bill creates additional hearings. If additional funding is required, it will be addressed through the annual budget process.

Department of Corrections. The bill may result in a reduction of local jail populations, which may increase costs for the Department of Corrections to transport parolees to their facilities and shift department costs from paying counties for jail beds to conducting prison operations. A precise impact cannot be determined, as the actual impact will depend on determinations at the county jail level. If additional funding is required, it will be addressed through the annual budget process.

State agencies employing law enforcement officers. The state agencies that employ law enforcement officers—including the Departments of Corrections, Natural Resources, Public Safety, and Revenue, and institutions of higher education—will have a workload increase to train officers on the new procedures created by the bill. The fiscal note assumes this can be accomplished within each agency's existing appropriations.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$13,051 in FY 2021-22 and \$29,674 in FY 2022-23.

Local Government

This bill is expected to result in an overall cost savings to local governments; however, costs will both increase and decrease as discussed below.

County jails. During the COVID-19 pandemic, sheriffs took measures to reduce county jail populations by modifying arrest standards, evaluating early release, and reducing cash bonds. If similar approaches continue, as encouraged by the bill, this will result in a cost savings in county jails.

District attorney offices, Denver County Court, and municipal courts. Similar to the Judicial Department, the bill's potential to create additional hearings will impact district attorney office workload, as well as revenue and costs in the Denver County Court, which is managed and funded by the City and County of Denver, and municipal courts.

Law enforcement agencies. Local law enforcement agencies may have additional costs to train officers on the new procedures created by the bill.

Effective Date

The bill was postponed indefinitely by the Senate Appropriations Committee on May 26, 2021.

State Appropriations

For FY 2021-22, the bill requires a General Fund appropriation of \$52,107 and 0.7 FTE to the Judicial Department.

State and Local Government Contacts

Alternate Defense Counsel
District Attorneys
Law
Public Defender

Corrections
Information Technology
Local Affairs
Sheriffs

Counties
Judicial
Municipalities