



Legislative
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HB 20-1019

**REVISED
FISCAL NOTE**

(replaces fiscal note dated February 10, 2020)

Drafting Number: LLS 20-0362
Prime Sponsors: Rep. Herod
Sen. Gonzales

Date: February 19, 2020
Bill Status: Senate Appropriations
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Bill Topic: **PRISON POPULATION REDUCTION AND MANAGEMENT**

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" 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 allows the Department of Corrections to house up to 650 inmates at Centennial Correctional Facility's south campus; requires a study of future prison bed needs in the state; creates a new crime of unauthorized absence; and requires a new sentencing hearing when an offender is terminated from a community corrections program, among other provisions. Beginning in the current fiscal year, the bill will increase state expenditures. It will also impact state revenue and increase state and local government workloads on an ongoing basis.

Appropriation Summary: The bill requires and includes appropriations of \$5.5 million in the current FY 2019-20 to the Department of Corrections. It also requires an appropriation of \$250,000 in FY 2020-21 to the Department of Local Affairs, and may require additional appropriations to DOC. See State Appropriations section.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill, as amended by the Senate Judiciary Committee.

**Table 1
State Fiscal Impacts Under HB 20-1019**

		FY 2019-20 <i>(current year)</i>	FY 2020-21	FY 2021-22
Revenue		-	-	-
Expenditures	General Fund	\$5,450,197	\$20,854,382	\$20,604,382
	Cash Funds	\$60,970	\$164,320	\$164,320
	Total	\$5,511,167	\$21,018,702	\$20,768,702
	Total FTE	37.0 FTE	210.4 FTE	210.4 FTE
Transfers		-	-	-
TABOR Refund		-	-	-

Summary of Legislation

This bill makes the changes to the way the state manages the prison population, as detailed below.

Utilization of Centennial Correctional Facility–South. This bill allows the Department of Corrections (DOC) to use up to 650 beds at the south campus of Centennial Correctional Facility (Centennial South) to house close custody inmates. The DOC may also house inmates who are not close custody on the campus for a period of up to three months after the bill's effective date in order to facilitate the movement of inmates displaced as a result of prison closure or where the lower than close custody inmate is voluntary serving in a leadership role as part of departmental programming with the purpose of progressing close custody inmates to lower security levels. The bill also repeals the law that allows the DOC to use Centennial South when the state's vacant male bed rate falls below 1 percent for two consecutive months, which was set to repeal on September 1, 2020.

Study and advisory committee on future prison bed needs in Colorado. This bill requires the Department of Local Affairs (DOLA) to contract with a nationally recognized prison accreditation entity to study future prison bed needs in Colorado. DOLA's executive director must select and convene an advisory group consisting of local government representatives from Bent and Crowley counties to consult with the entity during the study.

The study must include evidence-based strategies to safely reduce the prison population; an analysis of the economic and other impacts of private prison closure and recommendations on strategies to diversify the local economy; a utilization analysis of all facilities that can be used to house inmates; a program analysis with modifications or expansions that may be necessary to align with best practices or keep pace with demand; an analysis of the best practices and programs that are necessary for successful reintegration, alternatives to incarceration, and recidivism reduction strategies; and an analysis of the feasibility of the DOC obtaining privately owned facilities or utilizing unused state-owned buildings.

Prior to completing the study, DOLA, in conjunction with county commissioners, must provide notices and conduct public hearings in the counties where private prisons are located to allow public testimony, which DOLA must include in the final report. DOLA must provide the study to the Joint Budget Committee when making its budget recommendations for FY 2021-22 and provide copies to the Judiciary Committees of the General Assembly.

Sentencing hearings after terminations from a Community Corrections program. This bill requires sentencing courts to provide offenders with a new sentencing hearing after being terminated from a community corrections program.

Unauthorized absence. The bill creates a new crime of an unauthorized absence for a person on intensive supervision parole, in a community corrections program, or participating in a work release program and outlines different criminal offenses depending on prior conviction. Absence or attempted absence where the crime was violent or was a serious crime against a person is a class 6 felony. Where the crime does not meet these criteria, absence or attempted absence is charged as a class 3 misdemeanor. For any unauthorized absence where a violation of a permanent or temporary protection order is committed, the charge is a class 3 felony. The bill also makes conforming amendments to the victim rights act related to this new crime.

Incarceration of inmates from other states. The bill modifies the state law on accepting out-of-state inmates into Colorado private prisons by detailing provisions that must be adequately addressed in any contract or binding document between the sending state, the private prison, and

any political subdivision in the state. Provisions address acceptable inmate custody levels and staffing levels and require adequate planning for medical and mental health care for out-of-state inmates. Co-mingling of inmates from multiple states or transferring an inmate within 12 months of his or her eligible release date is prohibited. The bill also specifies contract requirements that indemnify the state and its political subdivisions from any liability related to incarcerating out-of-state inmates. The bill also requires contracting parties to provide proof of adequate insurance coverage that names the state or its political subdivisions as additionally insured.

Treatment options in parole revocation proceedings. Under current law, the Parole Board is required to consider placing a parolee in various programs for substance abuse or mental health treatment if it is determined that the parolee is in need of, and amenable to, treatment. Programs include outpatient programs, residential treatment programs under the Department of Public Safety, or parolee intensive treatment programs under DOC. This bill removes "and is amenable to treatment" from this section of statute.

Earned time. Under current law, earned time can be deducted from the prison or parole sentence of an inmate that makes progress in several areas including training, counseling, good behavior, and educational programs. This bill removes these statutory categories, and allows earned time to be awarded when there is positive progress in accordance with performance standards established by the DOC. The current maximum of 10 days of earned time per month is unchanged.

Comparable Crime Analysis

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of an existing crime. The following sections outline data on crimes that are comparable to the offense in this bill and discuss assumptions on future rates of criminal convictions under the bill. Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

Prior conviction data. This bill creates the new offense of unauthorized absence from intensive supervised parole, community corrections, or a work release program, and removes this category of offender from the current offenses of escape and attempted escape. Unauthorized absence or attempt where the prior conviction was violent or was a serious crime against a person is a class 6 felony. For all other prior convictions, unauthorized absence or attempt is a class 3 misdemeanor. For an unauthorized absence where the offender also commits a violation of a permanent or temporary protection order, the charge is a class 3 felony. Currently, persons who commit unauthorized absences are charged under the escape statute. Under current law, an offender in custody or confinement can be charged with a class 2 or 3 felony for escape or a class 4 or 6 felony for attempted escape; the felony level depends on the offender's prior conviction level.

- *Escape.* During the last three years, 1,096 offenders have been convicted and sentenced for escape. Of the persons sentenced, 867 were male, 229 were female. Demographically, 898 were White, 100 were Black/African American, 66 were Hispanic, 13 were American Indian, 10 were Asian, and 9 were classified as "Other." The circumstance of these escapes and the original crime for which the offender was charged or convicted is not known.
- *Attempted escape.* During the last three years, 1,909 offenders have been convicted and sentenced for attempted escape. Of the persons sentenced, 1,500 were male, 409 were female. Demographically, 1,508 were White, 317 were Black/African American, 52 were Hispanic, 13 were American Indian, 13 were classified as "Other," 5 were Asian, and 1 did not have a race identified.

Assumptions

DOC supplemental budget request. The provision of the bill authorizing the placement of inmates at the Centennial South correctional facility will require an estimated \$8,606,192 in the current FY 2019-20. A portion of these costs, \$3,095,025, are included in FY 2019-20 Department of Corrections supplemental appropriations bill to add 126 beds at Centennial South by mid-March. These costs are not included in the State Expenditures or State Appropriations sections of this fiscal note because they arise under current law and are assumed to be funded through the supplemental appropriations bill. If these costs are not included in the supplemental appropriations bill, or if the supplemental appropriations bill is not adopted, FY 2019-20 appropriations required to implement this bill will increase by \$3,095,025.

State Revenue

Criminal fines and court fees. Beginning in FY 2020-21, a reduction in criminal fines is expected to result from the new criminal penalty of unauthorized absence being applied to individuals in community corrections, intensive supervision parole, or work-release programs instead of the existing penalties of escape or attempted escape. The new class 6 felony is subject to a fine between \$1,000 to \$100,000 and the class 3 misdemeanor is subject to a fine between \$50 to \$750. This is a reduction in potential fines compared to the existing fine penalty between \$1,000 to \$1,000,000 for the felony classes related to escape and attempted escape. Criminal fines and court fees are credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. Because the courts have the discretion of incarceration, imposing a fine, or both, a precise state revenue impact cannot be determined. Criminal fine and court fee revenue is subject to TABOR.

State Expenditures

This bill increases General Fund and cash fund expenditures in the DOC by approximately \$5.5 million and 37.0 FTE in the current FY 2019-20, and \$20.8 million and 210.4 FTE in FY 2020-21 and each year thereafter. The bill will also increase General Fund expenditures in DOLA by \$250,000 in FY 2020-21. Workload and potential costs for the Parole Board and the Judicial Department will also increase. These impacts are shown in Table 2 and discussed below.

Table 2
Expenditures Under HB 20-1019

	FY 2019-20* <i>(current year)</i>	FY 2020-21	FY 2021-22
Department of Corrections			
Personal Services	\$4,518,036	\$14,067,664	\$14,067,664
Operating and Capital Outlay	\$349,213	\$3,307,064	\$3,307,064
Employee Benefits and Supp. Retirement Payments**	\$643,918	\$3,393,974	\$3,393,974
FTE - Personal Services	37.0 FTE	210.4 FTE	210.4 FTE
DOC (Subtotal)	\$5,511,167	\$20,768,702	\$20,768,702
Department of Local Affairs			
Prison Utilization Study	-	\$250,000	-
DOLA (Subtotal)	-	\$250,000	-
Total	\$5,511,167	\$21,018,702	\$20,768,702
Total FTE	37.0 FTE	210.4 FTE	210.4 FTE

* FY 2019-20 expenditures exclude \$3,095,025 that is currently included in the DOC supplemental budget bill for the operation of Centennial South.

** Because this bill requires over 20 FTE, certain costs that are typically considered centrally appropriated costs are appropriated directly in the bill instead of through the annual budget process. These include health, life, and dental benefits; short-term disability benefits; and supplemental retirement payments.

Department of Corrections. The DOC will hire 37.0 FTE permanent staff to operate up to 650 beds at the Centennial South correctional facility in the current fiscal year. Staff will increase to 210.4 FTE in FY 2020-21 and each year thereafter. Staff includes a warden, his or her support staff, maintenance staff, housing and security staff, food service staff, medical services staff, laundry staff, case management staff, mental health staff, business operations staff, education staff, recreation staff, drug and alcohol rehabilitation staff, parole staff, re-entry staff, and an inspector general. Operating costs are included for each staff section, as well as for transportation, utilities, pharmaceuticals, and inmate pay.

Employee benefits and supplemental retirement payments. Pursuant to Legislative Council Staff and Joint Budget Committee policy, centrally appropriated costs for bills involving more than 20 FTE are appropriated in the bill rather than through the annual budget process. These costs, which include employee insurance and supplemental employee retirement payments for the DOC, are estimated to be \$643,918 in the current FY 2019-20 and \$3,393,974 in FY 2020-21 and each year thereafter.

Modifications to escape and attempted escape offenses. Removing individuals in community corrections, intensive supervision parole program, and work-release from the provisions of the escape and attempted escape offenses and instead classifying these offenses as unauthorized absences will result in a future cost savings to DOC, as discussed in the Comparable Crime Analysis section above. Any change to the prison population will be addressed through the annual budget process.

Department of Local Affairs. Based on the cost and scope of prior prison studies, it is estimated that the study required by the bill will require \$250,000 in FY 2020-21. However, the deadline is not feasible; see Technical Note. Actual costs for the study will be determined through the RFP process. Any policy decisions resulting from this study will be addressed in future legislation. In addition, DOLA will require additional staff support to manage the advisory committee and the public outreach effort required by the bill. It is expected that resources for this will be made available through an interagency agreement with the DOC.

Judicial Department. The trial courts of the Judicial Department will see a reduction in attempted escape-related cases and an increase in sentencing hearings. Judicial data show an annual average of 685 unique attempted escape-related cases with no additional charge; these include escapes from all facility types. Under the bill, some of these cases will now be charged as unauthorized absences from intensive supervised parole, community corrections, or work release programs. Due to the reduced penalty associated with unauthorized absence, some cases will be more likely to plea bargain. The cumulative impact of the reclassification of these offenders to another category of offense may result in a cost savings up to 0.3 FTE Judicial Officer. However, the bill also creates an increase in sentencing hearings for individuals terminated from a community corrections program. There were 2,447 terminations from community corrections in FY 2017-18, 85 percent of which represent new case work under the bill. On average, these hearings are expected to take up to 30 minutes, necessitating up to 0.5 FTE Judicial Officer. Because the increase and decrease in workloads are within similar ranges, the fiscal note assumes no change in appropriations is required.

TABOR refunds. As discussed in the State Revenue section, the bill is expected to impact state General Fund obligations for TABOR refunds by an undetermined amount in FY 2020-21 and FY 2021-22. Under current law and the December 2019 Legislative Council Staff forecast, the bill will correspondingly impact the amount refunded to taxpayers via sales tax refunds made available on income tax returns for tax years 2021 and 2022, respectively. A forecast of state revenue subject to TABOR is not available beyond FY 2021-22.

Local Government Impact

The bill will increase workload for those local governments and officials that participate in the advisory committee and in the study. Similar to the Judicial Department, costs for district attorneys will increase related to the sentencing hearings and decrease related to the reduced penalties for unauthorized absence. The bill will also impact county jails, which will be affected by the sentencing changes and new crimes under this bill.

Technical Note

Given the time required to conduct an RFP process and the bill's requirements for public input before the study may be finalized, it is not feasible for DOLA to complete the study by November 2020.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

In the current FY 2019-20, the bill requires and includes an appropriation to the DOC of \$5,450,197 and 37.0 FTE from the General Fund and \$60,970 from the Canteens and Library Fund. The bill will also require a FY 2020-21 appropriation of \$20,768,702 and 210.4 General Fund and \$164,320 from the Canteens and Library Fund if these amounts are not included in the 2020 Long Bill.

In addition, for FY 2020-21, the bill requires an appropriation to DOLA of \$250,000 from the General Fund.

State and Local Government Contacts

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