



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 21-1019	Date:	May 19, 2021
Prime Sponsors:	Sen. Lee; Moreno Rep. Benavidez; Bacon	Bill Status:	Senate Judiciary
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Bill Topic: **PRE-TRIAL REFORM**

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 creates a working group to address policy related to lower-level offenses, prohibits arrest in certain cases, restricts the use of monetary bonds in certain cases, and authorizes sheriffs to manage their jail populations by establishing standards for admission. Beginning in FY 2021-22, the bill reduces state revenue, increases state expenditures, and both increases and reduces local expenditures.

Appropriation Summary: For FY 2021-22, the bill requires appropriations of \$74,811 to multiple state agencies and may increase expenditures to backfill lost revenue. See State Appropriations section.

Fiscal Note Status: The fiscal note reflects the introduced bill.

**Table 1
State Fiscal Impacts Under SB 21-273**

		Budget Year	Out Year
		FY 2021-22	FY 2022-23
Revenue	General Fund and Cash Funds	up to (\$500,000)	up to (\$500,000)
	Total Revenue	up to (\$500,000)	up to (\$500,000)
Expenditures	General Fund	\$74,811	\$44,847
	Centrally Appropriated	\$5,855	\$14,170
	Total Expenditures	\$80,666	\$59,017
	Total FTE	0.3 FTE	0.8 FTE
Transfers		-	-
TABOR Refund		-	-

¹ The General Assembly may choose to appropriate General Fund to backfill this revenue loss, as discussed in the State Expenditures section.

Summary of Legislation

This bill creates a working group to address policy related to lower-level offenses, prohibits arrest in certain cases, restricts the use of monetary bonds in certain cases, and authorizes sheriffs to manage their jail populations by establishing standards for admission. These provisions are described in more detail below.

Community Response to Low-Level Offenses Working Group. The bill creates the Community Response to Low-Level Offenses Working Group in the Department of Public Safety (DPS) to study and propose statewide policy and legislative initiatives to safely increase community response in lieu of law enforcement engagement for lower-level offenses and calls for service when there is no criminal conduct. The working group must report its findings to the General Assembly by February 1, 2022.

The working group must include an individual who has been or is the immediate family member of a person who has been arrested in Colorado for a low-level offense and representatives from:

- the Colorado District Attorney's Council;
- an organization representing Police Chiefs;
- an organization representing County Sheriffs;
- the Office of the State Public Defender;
- a nonprofit organization that provides direct services to crime survivors;
- a nonprofit organization that advocates on behalf of people with mental and behavioral health disorders;
- a nonprofit organization that advocates on behalf of people experiencing homelessness;
- a nonprofit organization that advocates for increasing community responses in lieu of law enforcement; and
- a nonprofit organization that advocates for increased racial justice in the criminal justice system.

Arrest prohibitions. The bill prohibits a peace officer from arresting a person based solely on the alleged commission of a traffic offense, petty offense, drug petty offense, municipal offense, drug misdemeanor offense, or misdemeanor offense, unless:

- custodial arrest is statutorily required;
- the offense is a victim rights crime;
- the offense includes an element of illegal possession or use of a firearm; or
- the offense constitutes any of the following: unlawful sexual behavior, failure to register as a sex offender, or is a violation of a temporary or regular extreme risk protection order, a credible threat to a school, or eluding in a vehicle; or
- the officer is unable to sufficiently verify the individual's identity absent a custodial arrest.

Bond restrictions. The bill prohibits a court from issuing a monetary bond for a misdemeanor offense; municipal offense; class 4, 5, or 6 felony; or a drug felony unless the court finds the defendant will flee prosecution or threaten the safety of another and no other condition of release can reasonably mitigate the risk.

The bill requires the court to issue a personal recognizance bond when the defendant fails to appear, unless:

- the defendant failed to appear when a witness was subpoenaed or a civilian witness was on call;
- the defendant intentionally failed to appear for the purpose of interfering with or deterring victim or witness participation in the case; or
- the defendant has failed to appear two or more times in the case.

The bill requires the court to issue a personal recognizance bond in a failure to comply with a probation conditions case that is not based on a criminal offense, unless:

- the violation was for a failure to comply with any court-ordered treatment related to a sex offense or domestic violence;
- the defendant has already had probation revoked for failure to comply in the case; or
- the court finds the defendant is likely to flee prosecution.

The bill permits appellate review of a court's bail or bond order by either the defendant or the prosecution after a reconsideration hearing, denial of a reconsideration of bond conditions, or order for bail after conviction.

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 leverage outstanding fees and fines due. Using FY 2019-20 revenue amounts, which account for recent legislative impacts to bonds, and removing the cases that are expected to continue to have cash bonds, it is estimated that the bill will reduce total revenue collections in the Judicial Department by up to \$500,000 per year. Fees and fines are credited to various cash funds and the General Fund.

State Expenditures

The bill will increase General Fund expenditures for the Department of Public Safety and the Judicial Department by \$80,666 and 0.3 FTE in FY 2021-22 and \$59,017 and 0.8 FTE in FY 2022-23. Costs are shown in Table 2 and detailed further below.

Table 2
Expenditures Under SB 21-273

Cost Components	FY 2021-22	FY 2022-23
Department of Public Safety		
Working Group Contractor Costs	\$50,375	
DPS Subtotal	\$50,375	
Judicial Department		
Personal Services	\$18,236	\$43,767
Operating Expenses	-	\$760
Capital Outlay Costs	\$6,200	\$320
Centrally Appropriated Costs ¹	\$5,855	\$14,170
FTE - Personal Services	0.3 FTE	0.8 FTE
Judicial Subtotal	\$30,291	\$59,017
Total	\$80,666	\$59,017
Total FTE	0.3 FTE	0.8 FTE

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

Department of Public Safety. In FY 2021-22, the Division of Public Safety requires two consultants to support the working group. The work is expected to take approximately six months and require contractor support for an estimated 620 hours, or 77.5 days, at the standard consulting rate of \$650 per day. The bill's effective date may preclude the working group from meeting its deadlines; see Technical Note.

Judicial Department. The bill will increase costs and workload in the Judicial Department, as discussed below. Costs have been prorated for the bill's effective date and the General Fund pay date shift.

- *Trial courts.* The bill requires 0.7 FTE trial court clerk staff to perform intake paperwork and compliance checks that are performed by law enforcement and jail staff under current law, but which are expected to shift to the courts as a result of the bill. This staffing level is based on the assumption that 5 minutes of additional workload will be required for approximately 16,708 cases per year. In addition, the bill requires 0.1 FTE clerk staff to perform fingerprinting for approximately 4,498 cases per year at 2 minutes per case.

Caseload assumptions for trial court staff start with the 33,416 county court misdemeanor and traffic cases with at least one misdemeanor charge that had a bond set in FY 2018-19. A random sample of the data shows that about half of all misdemeanor and traffic cases with at least one misdemeanor charge are filed with a summons. The fiscal note assumes 50 percent of these cases, or 16,708, were arrested under existing law and practice, most of which would not be subject to arrest under the proposed legislation. Fingerprinting caseload is further reduced to subtract offenses that do not require fingerprinting, and assume 4,498 cases will require fingerprint orders.

It is assumed that any workload impact resulting from personal recognizance bonds following a failure to appear, unless one of several exceptions is present, will increase workload to make necessary determinations, as required by the bill; however, it is assumed that a similar level of case review is generally occurring under existing circumstances and no change in appropriations is required. In addition, a comparison of failure to appear rates between defendants on different types of bonds showed a negligible difference.

Finally, providing transcripts of reconsideration hearings within three days of request may increase court workload; however, it is assumed that workflow can be adjusted to meet the bill's expedited timeframe.

- *Appeals process.* The bill expedites the appeal process for bond reconsideration. As a result, there may be increased incentive for defendants who are in custody to pursue bond reconsideration and subsequent appeal, resulting in a likely increase in motions for bond reconsideration, hearings, and appeals from county to district court, or from district court to the Court of Appeals. Since workload impacts are indeterminate, additional resources will be requested through the annual budget process, if necessary.
- *Agencies representing indigent offenders.* Workload and costs may be impacted in the offices of the Public Defender and Alternate Defense Counsel as a result of the bill. If additional funding is required, it will be addressed through the annual budget process. No change in appropriations is required for the OSPD to participate in the working group.
- *Collections unit.* Due to the reduced use of cash bonds, the Judicial Department may offset the revenue reduction impact by hiring additional collections staff to facilitate the collection of court-related debt. Alternately, the General Assembly may, at its discretion, appropriate additional General Fund to cover the loss of revenue under the bill. This 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 shown in Table 2.

TABOR refunds. The bill decreases state revenue subject to TABOR. For FY 2022-23, the March 2021 LCS forecast projects revenue to fall short of the TABOR limit by \$28.6 million, or 0.2 percent of the limit. If actual revenue exceeds the limit, the bill will decrease the amount required to be refunded to taxpayers from the General Fund in FY 2023-24. If the bill causes revenue to fall below the limit by \$30 million, it will trigger a transfer of up to \$30 million from the Unclaimed Property Trust Fund to the Housing Development Grant Fund under current law enacted in House Bill 19-1322.

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 and appeals will increase workload and potential costs for district attorneys, the Denver County Court, 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.

Counties and municipalities. Certain fine and fee revenue is passed through from the Judicial Department to local governments. To the extent this occurs as a result of the bill, this will reduce revenue to local governments.

Technical Note

The working group is required to report to the General Assembly by February 1, 2022; however, the bill's effective date does not allow the group to meet prior to January 1, 2022.

Effective Date

The bill takes effect January 1, 2022, assuming no referendum petition is filed.

State Appropriations

For FY 2021-22, the bill requires the following General Fund appropriations

- \$50,375 to the Department of Public Safety; and
- \$24,436 to the Judicial Department and 0.3 FTE.

In addition, the General Assembly may choose to appropriate up to \$500,000 General Fund to the Judicial Department to backfill the estimated revenue loss from the bill.

State and Local Government Contacts

Alternate Defense Counsel
District Attorneys
Law
Public Defender

Corrections
Information Technology
Local Affairs
Sheriffs

Counties
Judicial
Municipalities