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Final Fiscal Note

Drafting Number: LLS 21-1019 Date: August 12, 2021
Prime Sponsors: Sen. Lee; Moreno Bill Status: Postponed Indefinitely
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Bill Topic: PRE-TRIAL REFORM

- Summary of Fiscal Impact:
[X] State Revenue [] TABOR Refund
[X] State Expenditure [X] Local Government
[] State Diversion [] Statutory Public Entity

This bill would have restricted the use of arrests and monetary bonds in certain cases, and authorized sheriffs to manage their jail populations by establishing standards for admission. Beginning in FY 2021-22, the bill would have reduced state revenue, increased state expenditures, and both increased and reduced local expenditures.

Appropriation Summary: For FY 2021-22, the bill would have required an appropriation of \$24,436 to the Judicial Department.

Fiscal Note Status: The final fiscal note reflects the reengrossed bill, as amended by the House Judiciary and Finance Committees. 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 21-273

Table with 4 columns: Category, Sub-category, Budget Year (FY 2021-22), and Out Year (FY 2022-23). Rows include Revenue, Expenditures, Divisions, and TABOR Refund.

Summary of Legislation

This bill prohibits arrests and 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.

Summons in lieu of arrest. The bill requires a peace officer to issue a summons and not subject a person to a jail-eligible arrest based on probable cause to believe the person committed a traffic offense, petty offense, drug petty offense, municipal offense, drug misdemeanor, or misdemeanor offense, unless the alleged offense is:

- one for which custodial arrest is statutorily required;
- a Victim Rights Act crime;
- driving under the influence;
- an offense that includes an element of illegal possession or use of a deadly weapon;
- cruelty to animals;
- an offense that constitutes unlawful sexual behavior or failure to register as a sex offender;
- a violation of a temporary or regular extreme risk protection order, a credible threat to a school, eluding in a vehicle, or motor vehicle theft;
- a class 1 misdemeanor and the person has been charged with or convicted of the same offense more than two times in the previous six months or a combination of more than two charges or convictions of that same offense in the previous six months; or
- misdemeanor escape and the person has been charged with or convicted of misdemeanor escape more than two times in the previous six months or a combination of more than two charges or convictions of misdemeanor escape in the previous six months.

If the officer is unable to sufficiently verify the individual's identity absent a custodial arrest, an arrest may be made. Nothing in this section limits a peace officer's authority to execute an arrest warrant, including for failure to appear. The obligation is on the arresting officer, and neither courts nor sheriffs are required to perform a review to ensure compliance with this section as it related to jail admissions. This provision does not create a private right of action for violations, nor provide a basis to seek dismissal or suppression of evidence in a criminal case.

Bond restrictions. The bill prohibits a court from imposing a monetary condition of release unless the court finds on record that there is a substantial risk that the defendant will flee prosecution or threaten the safety of any other person or persons in the community, whether known or not, and no other condition of release can reasonably mitigate the risk. There is no limit on a court's authority to impose a monetary condition of release for an alleged class 1, 2, or 3 felony.

When a failure to appear did not harm victims or witnesses, the court must grant the defendant a personal recognizance bond when a defendant appears before the court on a warrant for fails to appear, unless:

- the defendant failed to appear when a witness was subpoenaed and appeared or a civilian witness was placed on call by the prosecution;
- the defendant intentionally failed to appear for the purpose of interfering with or deterring victim or witness participation in the case;

- the defendant previously failed to appear in the case; or
- the court finds the defendant is likely to flee prosecution.

When a probationer fails to comply with conditions of probation for which the underlying behavior is not a criminal offense, the court must issue a personal recognizance bond, unless:

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

Nothing in this section limits a court's authority to revoke probation based on a failure to comply with conditions of probation. This section does 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 office, a bonding and release commissioner, or any other judicial officer.

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 in the Judicial Department by amounts shown in Table 2. These impacts, as well as potential impacts to other state agencies, are detailed further below.

Table 2
Expenditures Under SB 21-273

Cost Components	FY 2021-22	FY 2022-23
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
Total	\$30,291	\$59,017
Total FTE	0.3 FTE	0.8 FTE

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

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.

- *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 is expected to decrease the amount of state revenue required to be refunded to taxpayers by up to \$500,000 per year beginning in FY 2021-22. TABOR refunds are paid from the General Fund. This estimate is based on the June 2021 LCS revenue forecast, which incorporates the revenue impacts of bills passed during the 2021 session. A forecast of state revenue subject to TABOR is not available beyond FY 2022-23.

Federal ARPA funds. This bill decreases state revenue, which may impact the state's flexibility in spending federal American Rescue Plan Act (ARPA) funds. For more information, see the LCS memo, titled "Legislative Changes and Flexibility in Use of American Rescue Plan Funds," available online at: <https://leg.colorado.gov/node/2211881>.

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 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.

Effective Date

The bill was postponed indefinitely by the House Finance Committee on June 7, 2021.

State Appropriations

For FY 2021-22, the bill requires a General Fund appropriation of \$24,436 to the Judicial Department and 0.3 FTE.

State and Local Government Contacts

Alternate Defense Counsel
District Attorneys
Law
Public Defender

Corrections
Information Technology
Local Affairs
Sheriffs

Counties
Judicial
Municipalities