



Legislative
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HB 19-1226

REVISED FISCAL NOTE

(replaces fiscal note dated March 20, 2019)

Drafting Number: LLS 19-1017
Prime Sponsors: Rep. Herod; Soper
Sen. Lee

Date: April 8, 2019
Bill Status: House Judiciary
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Bill Topic: BOND REFORM

**Summary of
Fiscal Impact:**

- State Revenue (*minimal*)
- State Expenditure
- State Transfer
- TABOR Refund (*minimal*)
- Local Government
- Statutory Public Entity

This bill, repeals, reenacts and amends various statutes related to bail, bond hearings, and pretrial services. This bill minimally impacts state and local government revenue and increases state expenditures on an ongoing basis. Local government expenditures are also increased and decreased on an ongoing basis.

**Appropriation
Summary:**

For FY 2019-20, this bill requires a General Fund appropriation of \$836,436 to the Judicial Department.

**Fiscal Note
Status:**

This fiscal note reflects the introduced bill and has been revised to reflect new information received.

**Table 1
State Fiscal Impacts Under HB 19-1226**

		FY 2019-20	FY 2020-21	FY 2021-22
Revenue		-	-	-
Expenditures	General Fund	\$836,436	up to \$5,656,323	up to \$5,706,404
	Centrally Appropriated	\$99,142	\$1,217,192	\$1,299,221
	Total	\$935,578	up to \$6,873,515	up to \$7,005,625
	Total FTE	3.3 FTE	up to 58.6 FTE	up to 63.6 FTE
Transfers		-	-	-
TABOR Refund		-	-	-

Summary of Legislation

This bill repeals, reenacts, and amends various statutes related to bail, bond hearings, and pretrial services as discussed below.

Bailable offenses. Under current law, offenders charged with certain offenses are deemed to be a significant risk to the public and may not be released on bail. This bill removes possession of a weapon by a previous offender and sexual assault from the list of crimes that are not bailable.

Judicial district pretrial services. By March 31, 2020, this bill requires each judicial district to develop:

- a pretrial release screening process to assess each arrested offender as soon as possible and no later than 24 hours after admission to a detention center;
- an administrative order of the chief judge of the judicial district that specifies written criteria allowing for the immediate pretrial release of certain persons detained on a summons or unsecured personal recognizance bond without monetary conditions and without an initial pretrial hearing.

The Office of the State Court Administrator must develop statewide standards and guidelines for pretrial release screening and release criteria. The standards and guidelines must be developed in conjunction with nationally relevant research and best practice models. Each Chief Judge of a judicial district must designate a person, agency, or program for each detention facility in the district to conduct pretrial screening, and must identify a bonding and release commissioner who is authorized to release defendants without monetary bond conditions.

Bond hearing representation. Under current law, all offenders have a right to be represented by an attorney at an initial bond hearing and must be advised of the possible charges, penalties, and his or her rights. This bill specifies that the court must notify the public defender of each person in custody before the initial hearing and allow for sufficient time to prepare a individualized argument for the release of the offender with appropriate conditions.

Bond hearing considerations. The least restrictive bond conditions that do not include monetary requirements must be used for any offenders not released through the pretrial screening process. The bill specifies considerations that must be made by the court in setting bond for the offender and the types of bonds that may be used. The court must order the commencement of the criminal proceedings within three days of the initial hearing, excluding weekends and holidays, unless good cause is shown for additional time or the parties to the case agree to additional time. A defendant in custody has scheduling preference over other court matters. This bill specifies procedures for how a defendant, prosecuting attorney, or bonding commissioner can ask for a review and modification of a bond.

County pretrial services. Under current law, counties are encouraged, but not required, to establish pretrial services programs. This bill requires all counties, and city and counties to establish pretrial services by July 1, 2020. Under the bill, a community advisory board consisting of a local law enforcement, district attorney, public defender, and citizen representative must be established in each judicial district to create a plan for the pretrial services program. The Chief Judge of a district must approve of the pretrial services plan before it is established. Such programs may be administered by the county or through a contract with a private nonprofit or for-profit entity or an intergovernmental agreement. Class C or D counties may request that the

state Judicial Department provide pretrial services in that county. Minimum standards and reporting requirements for each pretrial services program are specified in the bill and are consistent with those under current law.

The Pretrial Services Cash Fund is created for the purpose of operating or assisting in the operation of a county pretrial service program. This includes, but is not limited to, supervision services, contract services, treatment services, and program development. The fund consists of any money appropriated by the General Assembly and the State Court Administrator is authorized to accept gifts, grants, and donations from any public or private donor. The state court administrator must create an annual funding formula to distribute funds from this cash fund to counties that request pretrial services. All counties are eligible for this funding and counties without pretrial services are to be given priority.

State Revenue

Beginning in the current FY 2018-19, this bill impacts state cash fund revenue from bond forfeitures, traffic warrant fees, and gifts, grants, and donations. Overall, a minimal revenue decrease is expected. Bond forfeitures and traffic warrant fees are subject to TABOR; however, gifts, grants, and donations are not.

Bond forfeitures. To the extent that more defendants are released on a non-monetary bond, this bill decreases bond forfeiture revenue. From 2015 to 2017 there were an average of 965 bond forfeitures per year which resulted in the collection of an average of \$306,786 in total cash fund revenue from these forfeitures. This decrease is assumed to be minimal.

Traffic warrant fee. Under current law, a \$30 outstanding judgement warrant fee is assessed for the failure to appear in court in traffic cases. To the extent that non-monetary bonds are issued for traffic offenses, this bill could result in an increase in the number of instances where a defendant fails to appear on a traffic case and will thus increase traffic warrant fee revenue. A high level of compliance is assumed for any non-monetary bonds issued on traffic offenses; therefore, this increase is assumed to be minimal.

Gifts, grants, and donations. This bill authorizes the collection of gifts, grants, and donations which will increase state cash fund revenue. As of this writing, no source of gifts, grants, and donations have been identified.

State Expenditures

This bill increases Judicial Department expenditures by \$935,578 and 3.3 FTE in FY 2019-20, up to \$6,873,515 and 58.6 FTE in FY 2020-21, and up to \$7,005,625 and 63.6 FTE in FY 2021-22 and thereafter. These costs will be partially offset by a decrease in trial court costs and workload. These impacts are shown in Table 2 and discussed below.

**Table 2
 Expenditures Under SB 19-1226**

	FY 2019-20	FY 2020-21	FY 2021-22
Judiciary Department			
Personal Services	\$278,524	\$3,958,723	\$4,290,984
Operating Expenses and Capital Outlay Costs	\$22,232	\$342,600	\$60,420
Software and Computer Programming	\$535,680	\$155,000	\$155,000
Class B County Pretrial Funding	-	up to \$1,200,000	up to \$1,200,000
Centrally Appropriated Costs*	\$99,142	\$1,217,192	\$1,299,221
Total Cost	\$935,578	up to \$6,873,515	up to \$7,005,625
Total FTE	3.3 FTE	up to 58.6 FTE	up to 63.6 FTE

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

State Court Administrator's Office. The Judicial Department requires 2.6 FTE to develop statewide pretrial service program standards and guidelines and 1.0 FTE for a county pretrial services program director to oversee pretrial services in all counties. This staff will also develop and administer a county pretrial service funding model and enter into agreements with counties for the provision of such services. This assumes 8,264 hours are needed per year for pretrial service program development, administration and evaluation, which also includes statewide training, providing assistance to all judicial districts and counties, collecting and reviewing data, and report creation. Costs in FY 2019-20 include standard operating and capital outlay and are prorated for the General Fund paydate shift.

Computer programming. The Judicial Department requires \$535,680 in FY 2019-20 for a pretrial screening tool. This estimate assumes the department will issue an RFP and will need \$400,000 in one-time setup costs and \$135,680 for 1,280 hours of computer programming at a cost of \$106 per hours for system integration and support. Ongoing annual costs of \$155,000 are estimated for software leasing, maintenance, and hosting fees is needed beginning in FY 2020-21.

Class C and D county pretrial services. This bill increases Judicial Department costs to provide pretrial services to class C and D counties that request such services. Currently, 37 counties are classified as class C counties and 10 are classified as class D counties. It is unknown how many of these counties will request pretrial services through the Judicial Department; however, because a majority of these counties are rural, it is assumed that the majority, if not all, will request such services which will either be provided directly by the Division of Probation or indirectly through the Pretrial Services Cash Fund with services provided by the county, nonprofit, or a for-profit entity. Funding pretrial services for these counties is estimated to cost approximately \$5.3 million based on a need for 60 FTE to provide supervision to defendants released on bond through the pretrial service program. This is based on an analysis of supervision requirements for existing pretrial services programs and assumes 22 percent of defendants released on bond will require pretrial supervision and that each probation officer can supervise 73 offenders. Additional FTE costs may be needed for supervisory and support staff and it is assumed that the Judicial Department will request any required change in appropriations through the annual budget process, if needed, after

requests for county pretrial services are received and the full impact of providing such services is identified. Costs in FY 2020-21 include standard operating and capital outlay and are prorated for the General Fund payday shift.

Class B county pretrial services. Currently, four class B counties do not have pretrial services (Broomfield, Eagle, Montrose, and Summit). This bill allows these counties to receive funding from the Pretrial Services Cash Fund to operate or assist in the operation of a pretrial services program. The total cost for these four counties to provide these services is estimated to cost up to \$1.2 million per year beginning in FY 2020-21 based on the projected number of defendants requiring pretrial services. Actual costs will depend on the memorandum of understanding (MOU) between the Judicial Department and each county and whether or not full or partial program costs are provided through the fund. It is assumed that any change in appropriations, if needed, will be requested through the annual budget process once the MOU's are agreed upon.

The additional class B counties (12 counties) may seek funding from the Judicial Department for assisting in the operation of their pretrial services programs, implementation of statewide pretrial service program standards and guidelines, or for the implementation or changes to pretrial assessment tools. Because counties without pretrial services are to be given priority and new standards have not been created by the Judicial Department, the cost to provide assistance for these counties has not been estimated. It is assumed that any funds needed for this purpose will be requested through the annual budget process.

Trial court workload. Trial court workload may both increase and decrease under this bill. To the extent that more offenders are released on bond prior to an initial hearing, workload will decrease. However, by adding additional criteria that must be considered when making bonding decisions, workload is increased. Workload will also increase if more offenders fail to appear in court on non-monetary bonds to produce a bench warrant and conduct a rehearing. Overall, a minimal workload decrease is expected and any adjustments in appropriations will be addressed through the annual budget process.

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 \$99,142 in FY 2019-20, \$1.2 million in FY 2020-21 and \$1.3 million in FY 2021-22 and thereafter.

Local Government

Overall, this bill is expected to impact local government revenue, costs, and workload, as described below. The exact impact will vary by county depending on the caseload, existing pretrial service programs, staffing levels and future decisions how pretrial services are to be provided.

District attorneys. This bill both increases and decreases district attorney workload. Workload will increase to assist in the creation of county pretrial services in counties that do not already have such services. Workload will also increase to ensure the filing of cases within three days after an initial hearing and to attend additional bond reconsideration hearings. Workload to prepare for and attend bond hearings is decreased because more offenders will be released through pretrial service programs before such a hearing occurs.

Facility costs. Counties that do not currently have pretrial services will have increased costs to provide office and meeting space. It is assumed that counties will be required to provide this space regardless of whether they chose to operate their own pretrial services program or enter into an agreement with Judicial for the provision of these services. These impacts have not been estimated.

Pretrial services. Costs and workload will increase in counties that currently have pretrial services to update policies and procedures to ensure they are compliant with the requirements of this bill and the standards and guidelines that will be created by the Judicial Department. This could require additional staff and IT costs to ensure pretrial screening tools meet the requirements established by the Judicial Department so they can be validated by the department. To the extent that a county currently provides pretrial services and elects to enter into an agreement for the Judicial Department, a contract with a private non-profit or for profit organization, or enter into an intergovernmental agreement, county costs may be reduced. These impacts will vary by county and have not been estimated.

Denver County Court. Revenue costs and workload for Denver County Court will also be impacted by a minimal amount. Costs and workload also increase to ensure compliance with the requirements of this bill and the standards and guidelines that will be created by the Judicial Department.

Effective Date

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

State Appropriations

For FY 2019-20, this bill requires a General Fund appropriation of \$836,436 and 3.3 FTE to the Judicial Department.

State and Local Government Contacts

Counties District Attorneys Judicial Municipalities