



Legislative
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HB 19-1226

REVISED FISCAL NOTE

(replaces fiscal note dated April 17, 2019)

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

Date: May 1, 2019
Bill Status: Senate Second Reading
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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 totaling \$3.1 million to the Judicial Department and the Department of Public Safety.

**Fiscal Note
Status:**

This fiscal note has been revised to reflect the reengrossed bill as amended by the Senate State Veterans and Military Affairs and Senate Appropriations committees.

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

		FY 2019-20	FY 2020-21
Revenue		-	-
Expenditures	General Fund	\$480,306	\$362,832
	Cash Funds	\$2,500,000	-
	Centrally Appropriated	\$95,513	\$94,337
	Total	\$3,075,819	\$457,169
	Total FTE	4.0 FTE	4.3 FTE
Transfers	Cash Funds	\$2.5 million	-
	Cash Funds	(\$1.0 million)	-
	General Fund	(\$1.5 million)	-
	Total FTE	\$0	-
TABOR Refund		-	-

Summary of Legislation

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

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.

Judicial district pretrial services. By March 31, 2020, this bill requires each judicial district to develop the following which must be implemented by July 1, 2020:

- 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. Each district must obtain input from at least one person that was incarcerated in the district because of an inability to pay a monetary bond.

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.

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 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 entity or an intergovernmental agreement with another local government. Counties cannot contract with a for-profit entity for the provision of a pretrial services program. Minimum standards and reporting requirements for each pretrial services program are specified in the bill.

The Pretrial Services Cash Fund is created for the purpose of operating or assisting in the operation of a county pretrial service program. Counties are encouraged to seek funding to implement locally-based pretrial programs. This includes, but is not limited to, program development, assessment services, contract services, and supervision services. 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.

Pretrial services compliance. If a county is unable to establish a pretrial services program, the county must submit a statement of inability to comply that outlines the reasons for being unable to establish a program. Waiver requests must be reviewed by the Office of the State Court Administrator. The office must also determine if any technical assistance can be provided to the county seeking a waiver and submit an annual report to the General Assembly listing of all waiver requests with recommendations on how to create a pretrial services program in every county in the state.

Risk assessment instrument. The Office of the State Court Administrator must review and approve empirically developed and validated risk assessment instruments to be used by pretrial services programs. Beginning July 1, 2021 any risk assessment instrument must be evaluated, developed, and validated in Colorado to maximize accuracy and minimize race, ethnicity, or gender bias. The Division of Criminal Justice in the Department of Public Safety must evaluate any approved assessment instrument. The results of these studies are to be presented to General Assembly. The bill specifies what information must be collected by jurisdictions using a risk assessment tool.

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 Transfers

For FY 2019-20 only, this bill requires the following transfers to the Pretrial Services Cash Fund totaling \$2.5 million. Specifically, the bill requires:

- \$1.5 million to be transferred from the Offender Services Cash Fund; and
- \$1.0 million to be transferred from the General Fund.

State Expenditures

This bill increases state expenditures in the Judicial Department and the Department of Public Safety by a total of \$3.1 million and 4.0 FTE in FY 2019-20 and \$457,169 and 4.3 FTE FY 2020-21. 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 HB 19-1226**

Cost Components	FY 2019-20	FY 2020-21
Judicial Department		
Personal Services	\$306,541	\$334,409
Operating Expenses and Capital Outlay Costs	\$23,712	\$4,900
Pretrial Services Website/Data Collection Tool	\$110,240	-
County Pretrial Services Funding	\$2,500,000	-
Centrally Appropriated Costs*	\$86,119	\$86,626
FTE – Personal Services	3.7 FTE	4.0 FTE
Judicial Department (Subtotal)	\$3,026,612	\$425,935
Department of Public Safety		
Personal Services	\$21,013	\$22,923
Operating Expenses and Capital Outlay Costs	\$600	\$600
Consultant	\$18,200	-
Centrally Appropriated Costs*	\$9,394	\$7,711
FTE – Personal Services	0.3 FTE	0.3 FTE
Department of Public Safety (Subtotal)	\$49,207	\$31,234
Total	\$3,075,819	\$457,169
Total FTE	4.0 FTE	4.3 FTE

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

State Court Administrator's Office. The Judicial Department requires 4.0 FTE to develop statewide pretrial service program standards and guidelines. This staff will also develop and administer a county pretrial service funding model, develop an inability to comply form, provide technical assistance to counties that cannot establish a pretrial services program, evaluate and make recommendations on what is needed to establish a pretrial services programs in all counties, review data, and create reports. Costs in FY 2019-20 include standard operating and capital outlay and are prorated for the General Fund paydate shift.

Pretrial services website. The Judicial Department requires \$110,240 to create a website to collect pretrial services data to be used for evaluation, report creation, and future recommendations. This requires 1,040 hours of programming at a cost of \$106 per hour to develop this site and allow for pretrial services programs to update data to the department.

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.

County pretrial services funding. This bill encourages counties to seek funding from the Pretrial Services Cash Fund to establish or administer pretrial services programs and \$2.5 million is appropriated to the fund for this purpose in FY 2019-20. Cost to provide pretrial services in the counties that do not have such a program are estimated at \$6.5 million. Because this cost depends on how the pretrial services program is established in each county, the number of offenders supervised, and the number of counties that submit an inability to comply form, the exact FY 2019-20 cost cannot be estimated. It is assumed that the Office of the State Court Administrator will provide county pretrial services funding based on actual county costs after requests for funds are received and prioritized based on need. It is further assumed that the Judicial Department will request an annual appropriation to pay for county pretrial service program costs through the annual budget process after FY 2019-20.

Department of Public Safety. It is assumed the Department of Public Safety will contract with a consultant to evaluate any approved risk assessment tools for accuracy and bias and that 91 hours of consultant time are needed at a rate of \$200 per hour in FY 2019-20 and every three years thereafter. The department also requires 0.3 FTE for a statistical analyst that will gather data, assist in the assessment tool evaluation, and write reports. Standard operating costs are included for this position and costs are prorated in FY 2019-20 for the General Fund paydate shift.

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 \$95,513 in FY 2019-20 and \$94,337 in FY 2020-21.

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.

Pretrial services. Costs and workload will increase for all counties to establish pretrial services programs by July 1, 2020. Pretrial services costs are expected to range from \$3 to \$10 per offender per day. Based on an analysis of supervision requirements for existing pretrial services programs statewide an estimated \$6.5 million is needed to provide pretrial services to approximately 2,600 offenders in 51 counties. Costs will vary by county depending on the number of offenders and how the program is set up. To the extent that any counties seek a waiver costs will not be incurred.

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 intergovernmental agreement or contracts with a non-profit county costs may be reduced. These impacts will vary by county and have not been estimated. Future county pretrial services costs will be reduced if funding is received from the state Pretrial Services Cash Fund.

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 another government or nonprofit for the provision of these services. These impacts 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 and includes a General Fund appropriation of \$440,493 and 3.7 FTE to the Judicial Department and an appropriation of \$2,500,000 to the Pretrial Services Cash Fund. This bill also includes a General Fund appropriation of \$39,813 and 0.3 FTE to the Department of Public Safety.

State and Local Government Contacts

Counties	District Attorneys	Judicial	Municipalities
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