



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

HB 20-1019

FISCAL NOTE

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

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Bill Status: House Judiciary
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Bill Topic: PRISON POPULATION REDUCTION AND MANAGEMENT

- Summary of Fiscal Impact: State Revenue, State Expenditure, State Transfer, TABOR Refund, Local Government, Statutory Public Entity

This bill allows the Department of Corrections to utilize Centennial Correctional Facility's south campus if certain conditions are met; requires a study on ending the use of private prisons; modifies and reclassifies escape and attempted escape offenses; creates a new crime of absconding; modifies parole board policies; allows the department to set standards related to earned time; and requires courts to provide offenders with a hearing for any termination from a community corrections program.

Appropriation Summary: For FY 2020-21, this bill requires an appropriation of \$250,000 to the Department of Corrections. Additional appropriations for prison operations may be required by this bill, but are assumed to be handled through the annual budget process.

Fiscal Note Status: This fiscal note reflects the introduced bill, which was requested by the Prison Population Management Interim Study Committee.

Table 1
State Fiscal Impacts Under HB 20-1019

Table with 3 columns: Category, FY 2020-21, FY 2021-22. Rows include Revenue, Expenditures (General Fund), Transfers, and 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 the south campus of Centennial Correctional Facility (Centennial South) to house close custody inmates with the condition that it remove one inmate from a private prison for each inmate it places in Centennial South. 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 to end the use of private prisons. This bill requires the DOC to study how to end the use of private prisons in Colorado by 2025. The bill requires the study to include evidence-based strategies to move offenders into alternative facilities or programs, as well as analyses of economic impacts and tax revenue loss, community impact, utilization, the effect of releasing sex offenders who are assessed as low risk, and offender reintegration best practices, among other topics. The DOC 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.

Evidentiary hearings on terminations from a Community Corrections program. This bill requires sentencing courts to provide offenders with an evidentiary hearing or a new sentencing hearing for any termination from a community corrections program.

Modification to escape and attempted escape offenses. 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. This bill reduces the crime of escape to a class 4 felony and the crime of attempted escape to a class 5 or 6 felony, depending on the prior conviction level. The bill also removes individuals who are serving a direct sentence to community corrections, are transitioning from DOC custody to community corrections, or are in an intensive supervision parole program from the definition of in custody or confinement. The charge of escape and attempted escape are also removed from the habitual criminal statutes.

Absconding from intensive supervision parole or community corrections. The bill creates a new crime of absconding for a person on intensive supervision parole or in a community corrections program and outlines different criminal offenses depending on prior conviction. Absconding where the crime was violent or had a victim is a class 6 felony, with attempted absconding as a class 1 misdemeanor. Where the crime does not meet this criteria, absconding or attempted absconding is charged as a class 3 misdemeanor.

Parole Board review. Under current law, if the prison vacancy rate falls below 3 percent for 30 consecutive days, the DOC must request the parole board to review a list of inmates within 90 days of their mandatory release date who have an approved parole plan and submit a list of eligible inmates with a favorable parole plan who have been assessed to be medium or lower risk. This bill removes statutory references to "approved" and "favorable" parole plans from these requirements.

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.

Prior conviction data. This bill changes elements of the existing crimes of escape and attempted escape. Under current law, an offender in custody or confinement may be charged with a class 2 or 3 felony for escape and a class 4 or 5 felony for attempted escape. Under current law, this includes persons who are sentenced to community corrections or intensive supervised parole.

- *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.

This bill also creates the new offense of absconding from intensive supervised parole or community corrections. Absconding where the prior conviction was violent or was a serious crime against a person is a class 6 felony and attempted absconding is a class 1 misdemeanor. For all other prior convictions, absconding is a class 3 misdemeanor. Currently, persons who abscond are charged under the escape statute (see above).

Assumptions regarding modifications to and new offenses. It is assumed that changes to the existing classifications of escape or attempted escape will result in shorter concurrent or consecutive sentences in future fiscal years that will be addressed through the annual budget process. Removing individuals in community corrections or an intensive supervision parole program from the provisions of the escape and attempted escape offenses, and instead classifying these offenses as absconding, will result in cost savings to DOC, which will be addressed through the annual budget process. Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Revenue

Beginning in FY 2020-21, this bill is expected to result in a net decrease to state revenue from criminal fines and court fees. A reduction in criminal fines are expected to result from the modifications to the escape and attempted escape provisions of statute. Penalties for misdemeanor or felony escape can range from \$50 to \$1,000,000, and penalties for attempted escape from a community corrections or an intensive supervised parole ranges from \$1,000 to \$100,000. However, the evidentiary hearings required under the bill are expected to increase court fees. 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 costs in the DOC by \$250,000 in FY 2020-21 only. The fiscal note assumes that costs to operate Centennial South will be addressed through the budget process, as discussed below. Workload and potential costs for the Parole Board and the Judicial Department will also increase. Apart from these increases, the bill's changes to escape-related offenses are expected to reduce DOC costs.

Department of Corrections. The fiscal note identifies three cost drivers for the DOC under the bill, and one of cost savings.

- *Study to end the use of private prisons.* 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. The fiscal note assumes that the study will be contracted in order to bring in required expertise and independence. The DOC will submit a request for proposal (RFP) and enter into a contract with a vendor to complete the study. Actual costs will be determined through the RFP process.
- *Utilization of Centennial South.* Funding for Centennial South may occur through the budget process, other legislation, or through this bill. At this time it is unknown where funding will be allocated to facilitate the use of Centennial South and how much, if any, should be appropriated in this bill. This fiscal note will be revised when additional information is known.
- *Parole Board review.* The bill is expected to result in more referrals of offenders to the Parole Board. The board is currently conducting a pilot project where its staff prepares pre-hearing report packets for board members in advance of application hearings for offenders; additional staff may be required to help the board prepare for additional parole hearings under the bill. These costs, as well as any adjustment to the prison population as a result of increased parole review, will be addressed through the annual budget process.
- *Modifications to escape and attempted escape offenses.* Removing individuals in community corrections or an intensive supervision parole program from the provisions of the escape and attempted escape offenses and instead classifying these offenses as absconding will result in cost savings to DOC, which will be addressed through the annual budget process. Minimizing sentence classifications for escape or attempted escape offense will also result in shorter concurrent or consecutive sentences in future fiscal years that will be addressed through the annual budget process.

Judicial Department. The trial courts of the Judicial Department will see a reduction in attempted escape-related cases and an increase in evidentiary 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 absconding from intensive supervised parole or community corrections, and due to the reduced penalty, other cases will be more likely to plea bargain. Removal of these cases will result in a potential cost savings up to 0.3 FTE judicial officer. However, the bill also creates a substantial increase in evidentiary hearings. There were 2,447 discharges from community corrections in FY 2017-18, 85 percent of which represent new case work under the bill. On average, these hearings will take 30 minutes, so the court requires up to 0.5 FTE Judicial Officer. Considering these offsetting impacts, and that new absconding cases will borrow from current escape cases, any increase in caseload is expected to be minimal. Because the increase and decrease are within similar ranges, the fiscal note assumes no change in appropriations is required.

TABOR refunds. The bill is expected to minimally decrease state General Fund obligations for TABOR refunds by in FY 2020-21 and FY 2021-22. Under current law and the December 2019 Legislative Council Staff forecast, the bill will correspondingly decrease 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

Similar to the Judicial Department, costs for district attorneys will increase related to the evidentiary hearings and decrease related to the attempted escape modifications under the bill. The bill will also impact county jails, which will be affected by the sentencing changes and new crimes under this bill.

Effective Date

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

State Appropriations

For FY 2020-21, this bill requires a General Fund appropriation of \$250,000 to the Department of Corrections. Appropriations for the operation of Centennial South are assumed to be handled through the annual budget process.

State and Local Government Contacts

Alternate Defense Counsel
Information Technology
Public Safety

Corrections
Judicial

District Attorneys
Public Defender