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FISCAL NOTE

Drafting Number: LLS 20-0532	Date: February 20, 2020
Prime Sponsors: Sen. Lee; Gardner	Bill Status: Senate Judiciary
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Bill Topic: PRETRIAL RELEASE

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input checked="" 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 amends various statutes related to bail, bond hearings, and pretrial services. This bill impacts state and local government revenue and expenditures on an ongoing basis.

Appropriation Summary: In FY 2020-21, the bill requires an appropriation of \$2.7 million to multiple state agencies. See State Appropriations Section.

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

Table 1
State Fiscal Impacts Under SB 20-161

		FY 2020-21	FY 2021-22
Revenue		-	-
Expenditures	General Fund	\$2,101,414	\$1,915,593
	Centrally Appropriated	\$434,078	\$483,518
	Total	\$2,535,492	\$2,399,111
	Total FTE	16.2 FTE	19.2 FTE
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

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

Bond hearing considerations. The bill requires the least restrictive bond conditions that do not include monetary requirements to 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 bond 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.

Appellate review. The bill includes new procedures and timeframes for appellate court review of the terms and conditions of bail or appeal bond. The appellate court must issue a formal opinion no later than 14 days after the being briefed by the parties. This bill specifies the actions the appellate court may take in response to its review.

Judicial district pretrial services. This bill requires each judicial district to develop the following procedures, which must be implemented by April 1, 2021:

- 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; and
- 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 local stakeholders and at least one person that was incarcerated in the district because of an inability to pay a monetary bond.

The Division of Criminal Justice (DCJ) in the Department of Public Safety (DPS) 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. By October 1, 2022, and every October 1 thereafter, the DCJ will evaluate the outcome of bond setting processes. 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 April 1, 2021. Under the bill, a community pretrial 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 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 may contract with a for-profit entity for the provision of a pretrial services program if the county ensures that private entity operates without identifiable conflict. Minimum standards and reporting requirements for each pretrial services program are specified in the bill. By March 1, 2022, and every March 1 thereafter; counties must provide an annual calendar year report to DPS and the DPS will present an annual combined report to the General Assembly.

Pretrial Services Cash Fund. The Pretrial Services Cash Fund is created for the purpose of operating or assisting in the operation of county pretrial service programs. 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 DPS is authorized to accept gifts, grants, and donations from any public or private donor. The DPS must create a funding formula to distribute funds from this cash fund to counties that allow for early release of persons arrested without monetary conditions of bond and allow for the continued release of persons. All counties are eligible for this funding.

Risk assessment instrument. By December 1, 2020, the DCJ must compile an inventory of approved pretrial risk assessment instruments available for use in Colorado. DCJ must review and approve empirically developed and validated risk assessment instruments to be used by pretrial services programs. Any risk assessment instrument must be evaluated, developed, and validated in Colorado to maximize accuracy and minimize race, ethnicity, or gender bias. The results of these studies must be presented to General Assembly. The bill specifies what information must be collected by jurisdictions using a risk assessment tool.

Summons in lieu of warrant or arrest. The bill requires that summons be issued for all traffic offenses, petty offenses, and misdemeanor offenses, with some exceptions outlined in the bill. In addition, law enforcement may issue a summons for felony offenses pursuant to a local policy developed with the consent of a district attorney. For any Class 4, 5, or 6 felony offenses, along with level 3 and 4 drug felony offenses, the bill states a preference and presumption for summons instead of arrest with certain exemptions included in the bill. If a summons is issued in lieu of arrest or a warrant, the summons must be in writing and include certain information outlined in the bill.

Background and Assumptions

In calendar year 2019, there were 24,201 misdemeanor and traffic cases filed with a monetary bond. This fiscal note assumes that 1 percent, or 242 cases, may be reviewed by the district court. In addition, the Court of Appeals receives approximately 24 appeals related to bond decisions, with an additional 15 post-conviction motions per year.

State Revenue

Beginning in the FY 2020-21, this bill impacts state cash fund revenue from bond forfeitures and gifts, grants, and donations. Bond forfeitures 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. This decrease 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 state expenditures in the Judicial Department and the DPS by a total of \$2.5 million and 16.2 FTE in FY 2020-21 and \$2.4 million and 19.2 FTE in FY 2021-22. These impacts are shown in Table 2 and discussed below.

**Table 2
Expenditures Under SB 20-161**

Cost Components	FY 2020-21	FY 2021-22
Judicial Department		
Personal Services	\$1,391,417	\$1,669,704
Operating Expenses and Capital Outlay Costs	\$476,231	\$41,095
Centrally Appropriated Costs*	\$369,120	\$414,638
FTE – Personal Services	14.0 FTE	16.6 FTE
Judicial (Subtotal)	\$2,236,768	\$2,125,437
Department of Public Safety		
Personal Services	\$157,367	\$188,840
Operating Expenses and Capital Outlay Costs	\$21,705	\$3,510
Contractor Costs	\$42,250	-
Travel	\$11,556	\$11,556
Document Management	\$888	\$888
Centrally Appropriated Costs*	\$64,958	\$68,880
FTE – Personal Services	2.2 FTE	2.6 FTE
DPS (Subtotal)	\$298,724	\$273,674
Total	\$2,535,492	\$2,399,111
Total FTE	16.2 FTE	19.2 FTE

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

Judicial Department. The Judicial Department requires 14.0 FTE in FY 2020-21 and 16.6 FTE in FY 2021-22 FTE in the trial and appellate courts to handle additional appeals as described below.

- *Trial courts.* The trial courts in the Judicial Department require 0.9 FTE of a magistrate to handle the additional 242 expected new county court cases that will be reviewed by the district court. This magistrate requires 1.8 FTE for support staff for a court clerk, law clerk, and court reporter. Standard operating and capital costs are included. Also, adding magistrate FTE results in costs for law library materials, travel, and facility costs for courtroom build out and furnishings, which total \$81,279. First-year costs are prorated to reflect the General Fund paydate shift and the August start date.

- *Court of Appeals.* The Court of Appeals requires an additional three-judge panel to handle the increase in appeals and to accommodate the 14-day requirement for written review. The panel requires three staff attorneys, six law clerks, and a court judicial assistant to handle a formal opinion process. The additional panel will hear cases and issue written decisions on an expedited timeframe similar to certain cases related to mental health. Also, adding magistrate FTE results in costs for law library materials, travel, and furnishings, which total \$91,619. First-year costs are prorated to reflect the General Fund paydate shift and the August start date.

Trial court workload. Normal 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.

Department of Public Safety. DPS requires 1.0 FTE for a statistical analyst to gather data, assist in the assessment tool evaluation, analyze bond data, develop methodologies and best practices, and comply with the required reporting included in the bill. Travel costs for the analyst are included in order to work with local jurisdictions and stakeholders, as well as provide education, training, and assistance. DPS also requires 1.6 FTE for a program grant manager and financial grant manager to develop and implement the county pretrial services funding. It is also assumed that in order for DPS to compile an inventory of approved pretrial risk assessment instruments available for use in Colorado by December 1, 2020, the department requires a consultant. 65 hours of consultant time are needed at a rate of \$650 per hour in FY 2020-21 only. DPS also requires document costs for training materials and reports. Standard operating costs are included for this position and costs are prorated in FY 2020-21 for the General Fund paydate shift and the August start date.

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 \$434,078 in FY 2020-21 and \$483,517 in FY 2021-22.

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

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 on how pretrial services are to be provided.

District attorneys. This bill will increase costs for district attorney offices. As discussed above, costs will increase to handle the increase in appeals and respond to each appeal within the timeframes outlined in the bill. Workload will increase to assist in the creation of county pretrial services in counties that do not already have such services and 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.

County pretrial services. Costs and workload will increase for all counties to establish pretrial services programs by April 1, 2021. Costs will vary by county depending on the number of offenders and how the program is implemented. 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. This could require additional staff and IT costs to ensure pretrial screening tools meet the requirements established. To the extent that a county currently provides pretrial services and elects to enter into an intergovernmental agreement or contracts with a non-profit organizations, 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.

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 DCJ.

Technical Note

This bill encourages counties to seek funding from the Pretrial Services Cash Fund to establish or administer pretrial services programs; however the bill appropriates no money towards the fund.

Effective Date

The bill takes effect August 5, 2020, if the General Assembly adjourns on May 6, 2020, as scheduled, and no referendum petition is filed.

State Appropriations

In FY 2020-21, the bill requires the following General Fund appropriations:

- \$1,867,648 to the Judicial Department, and 14.0 FTE; and
- \$233,766 to the Department of Public Safety, and 2.2 FTE.

State and Local Government Contacts

Counties Judicial Municipalities Public Safety