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Fiscal Note

Drafting Number: LLS 21-0193
Prime Sponsors: Sen. Lee
Rep. Benavidez

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Bill Status: Senate Judiciary
Fiscal Analyst: Erin Reynolds | 303-866-4146
Erin.Reynolds@state.co.us

Bill Topic: **JAIL POPULATION MANAGEMENT TOOLS**

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input 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 authorizes peace officers to issue a court summons in lieu of making an arrest; limits the offenses that may result in arrest; prohibits the court from imposing a monetary condition of release unless certain conditions are met; and authorizes sheriffs to manage their jail populations by establishing admission standards. Beginning in FY 2021-22, the bill minimally reduces state revenue, increases state expenditures, and both increases and reduces local expenditures.

Appropriation Summary: For FY 2021-22, the bill requires an appropriation of \$93,185 to the Judicial Department.

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

Table 1
State Fiscal Impacts Under SB 21-062

		Budget Year	Out Year
		FY 2021-22	FY 2022-23
Revenue		-	-
Expenditures	General Fund	\$93,185	\$178,137
	Centrally Appropriated	\$25,147	\$56,509
	Total Expenditures	\$118,332	\$234,646
	Total FTE	1.4 FTE	3.2 FTE
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

This bill authorizes peace officers to issue a court summons in lieu of arrest; limits the offenses that may result in arrest; prohibits the court from imposing any monetary condition of release except in certain limited cases; and authorizes sheriffs to manage their jail populations by establishing standards for admission. These provisions are described in more detail below.

Summons and complaint. The bill gives a peace officer the authority to issue a summons and complaint for certain offenses, unless arrest is statutorily required or the offense is a crime of violence.

Arrest prohibitions. The bill prohibits a peace officer from subjecting a person to custodial arrest in certain circumstances. "Arrest" is defined to include transport of a person to a jail for confinement in advance of court proceedings, but to exclude transport of a person to a jail for the purpose of fingerprinting, photography, DNA testing, or blood alcohol testing, and transport of a person to a hospital or behavioral or mental health facility pursuant under statutory or court-ordered authority.

Under the bill, a peace officer may not arrest a person based solely on the alleged commission of a traffic offense; petty offense; municipal offense; misdemeanor offense; a class 4, 5, or 6 felony; or a level 3 or 4 drug felony unless:

- a custodial arrest is statutorily required;
- the officer is unable to sufficiently verify the individual's identity absent a custodial arrest;
- the person was convicted of driving under the influence in the previous 12 months; or
- the offense is a felony or a victims' rights crime, the offense includes an element of illegal possession or use of firearm, the offense constitutes unlawful sexual behavior, or the offense is a violation a temporary or regular extreme risk protection order, a violation posing a credible threat to a school, or a violation of eluding in a vehicle and:
 - the arresting officer records in the arrest documents a reasonable suspicion to conclude the person poses a threat to the safety of another, absent custodial arrest; or
 - the arresting officer records in the arrest documents a reasonable suspicion to conclude the person has indicated a clear unwillingness to cease and desist in criminal behavior, absent custodial arrest.

Bond prohibitions. The bill prohibits a court from issuing a monetary bond for a misdemeanor offense; municipal offense; class 4, 5, or 6 felony; or level 3 or 4 drug felony unless the court finds the defendant will flee prosecution or threaten the safety of another and no other condition of release can reasonably mitigate the risk. The bill requires the court to issue a personal recognizance bond when the defendant fails to appear unless the defendant has failed to appear three or more times in the case. The bill requires the court to issue a personal recognizance bond in a failure to comply with conditions probation hearing unless it is based on a commission of a new crime.

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 collect outstanding fees and fines due. In FY 2019-20, the department collected \$675,000 by applying cash bonds to court-ordered obligations. As described in the State Expenditures section, the fiscal note identifies the need for additional staff to collect lost fee and fine revenue; therefore, any revenue reduction is expected to be minimal.

State Expenditures

The bill will increase costs for the Judicial Department by \$118,332 and 1.4 FTE in FY 2021-22 (half-year impact) and \$234,646 and 3.2 FTE in FY 2022-23. Costs have been prorated for the bill's effective date and the General Fund pay date shift, as shown in Table 2 and detailed further below.

**Table 2
 Expenditures Under SB 21-062**

Cost Components	FY 2021-22	FY 2022-23
Judicial Department		
Personal Services	\$72,425	\$173,817
Operating Expenses	\$2,160	\$4,320
Capital Outlay Costs	\$18,600	-
Centrally Appropriated Costs ¹	\$25,147	\$56,509
Total	\$118,332	\$234,646
Total FTE	1.4 FTE	3.2 FTE

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

Judicial Department—trial courts. The bill requires 2.0 FTE clerk staff to perform intake paperwork and compliance checks that had been previously performed by law enforcement and jail staff. FTE amount is based on the assumption that 5 minutes of additional workload will be required for approximately 50,000 cases per year. In addition, the bill requires 0.6 FTE clerk staff to perform fingerprinting for an estimated 37,319 cases at 2 minutes per case.

- *Assumptions.* Caseload used for this estimate uses a two-year average and excludes cases under the Victim's Rights Act; cases involving a crime of violence, including domestic violence; and cases where a cash bond was set post-sentence. Of the remaining cases, the estimate includes 95 percent of felony cases and 50 percent of misdemeanor cases, and removes an extra 10 percent of those cases to account for unique circumstances where arrests may continue to occur. Fingerprinting caseload is further reduced to subtract offenses that do not require fingerprinting.

Judicial Department—collections unit. Due to the reduced use of cash bonds, the Judicial Department requires 0.6 FTE collections staff to facilitate the collection of court-related debt. The fiscal note includes this staff so that the Judicial Department is able to meet its statutory obligation to collect fine and fee revenue.

- *Assumptions.* In FY 2019-20, there were 6,959 cases where cash bonds were used to pay court-ordered obligations. Workload impact assumes 33 percent of these will no longer be assessed a cash bond and that each case averages 30 minutes of collection time.

Judicial Department—hearing increase. Workload and costs may increase in trial courts and the offices of the Public Defender and Alternate Defense Counsel to the extent the bill creates additional hearings. If additional funding is required, it 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 estimated to be \$25,147 in FY 2021-22 and \$56,509 in FY 2022-23.

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 impact district attorney office workload, as well as revenue and costs in the Denver County Court, which is managed and funded by the City and County of Denver, 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.

Effective Date

The bill takes effect January 1, 2022, assuming no referendum petition is filed.

State Appropriations

For FY 2021-22, the bill requires a General Fund appropriation of \$93,185 and 1.4 FTE to the Judicial Department.

State and Local Government Contacts

Alternate Defense Counsel
District Attorneys
Law
Public Defender

Corrections
Information Technology
Local Affairs
Sheriffs

Counties
Judicial
Municipalities