



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

Bill 2

FISCAL NOTE

Drafting Number: LLS 20-0362
Prime Sponsors:

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Bill Status: Bill Request
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Bill Topic: PRISON POPULATION REDUCTION AND MANAGEMENT

**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 makes several changes to prison population management. Overall, this bill will increase state expenditures, and minimally decrease state revenue and local government workload.

**Appropriation
Summary:**

For FY 2020-21, this bill requires an appropriation of \$455,000 to the Department of Corrections.

**Fiscal Note
Status:**

This fiscal note reflects the bill draft requested by the Prison Population Management Interim Study Committee.

Table 1
State Fiscal Impacts Under Bill 2

		FY 2020-21	FY 2021-22
Revenue		-	-
Expenditures	General Fund	\$455,000	\$5,000
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

This bill makes the following prison population management changes.

Centennial Correctional Facility. This bill repeals sections of statute that allows the south campus of the Centennial Correction Facility (CSP II) to be used when the state male inmate vacant bed rate falls below one percent for two consecutive months. Under this bill, the Department of Corrections (DOC) may use CSP II to house close custody inmates; however, for each state inmate housed at CSP II, one inmate must be removed from one of the three private prisons used by the state to house inmates until CSP II reaches full capacity.

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

Private prison use study. The DOC must study how to end the use of private prisons in Colorado by 2025. This study must analyze:

- the use of alternative facilities and programs;
- the local government, community-based provider, and economic impacts;
- state-operated facilities and programs and the feasibility of the state obtaining private prison facilities; and
- best practices and programs for the reintegration of offenders and the resources needed to transition away from private prisons.

Upon completion, this study must be presented to the Joint Budget Committee of the General Assembly.

Early release 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 the statutory categories in which earned time may be achieved and instead allows the DOC to establish earned time performance standards. The current maximum of 10 days of earned time per month remains the same.

Escapes. Under current law an offender in custody or confinement that escapes or attempts to escape can be charged with a new crime, which could be a misdemeanor or a felony depending on the circumstances of his or her custody or confinement and the crime for which he or she was originally charged or convicted. This bill excludes direct sentences to community corrections and inmates transferring from DOC to community corrections or an intensive supervised parole program from the inmates that are considered to be in custody or confinement, and thus eliminates criminal charges for escape or attempted escape in these instances.

Background

CSP II was opened in 2010 and was designed to house offenders in solitary confinement. The practice of long-term solitary confinement and use of CSP II was discontinued in 2012. CSP II is currently vacant but has been maintained by the DOC and has a capacity of 948 capacity (918 operational capacity with 30 restricted housing beds). In 2019, the General Assembly enacted

Senate Bill 19-259, which allows for the use of CSP II when the state male inmate vacant bed rate falls below one percent for two consecutive months with no more than 126 beds at CSP II able to be used for this purpose. The state male inmate vacancy rate has not fallen below one percent since SB 19-259 was enacted, therefore CSP II has not been utilized for this purpose. This allowance repeals September 1, 2020.

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 an element of the existing crimes of escape and attempt to escape from custody or confinement by excluding offenders directly sentenced to community corrections and inmates transferred from DOC to community corrections or intensive supervised parole from the inmates that are considered to be in custody or confinement. Under current law an offender may be charged with either a misdemeanor or felony for escape depending on the circumstances and a class 5 felony for attempted escape from 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, 10 were Asian, 13 were American Indian, 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, 5 were Asian, 13 were American Indian, 13 were classified as "Other", and 1 did not have a race identified.

Assumptions. This bill does not contain an effective date and is assumed to take effect July 1, 2020. It is further assumed that changes to the existing elements of escape or attempt to escape will result in one fewer escape or attempted escape conviction per year. However, because current sentencing for these crimes can be concurrent or consecutive and is dependent on several factors such as the circumstances of the escape, the original crime, and because additional charges are often incurred, it is assumed that any impacts 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 decreases state revenue from criminal fines and court fees. The fine penalty for misdemeanor or felony escape can range from \$50 to \$1,000,000 depending on the circumstance of the crime and the original crime for which the offender was charged or convicted. The fine penalty for attempting to escape from a community corrections or an intensive

supervised parole ranges from \$1,000 to \$100,000. 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 costs in the DOC by \$455,000 in FY 2020-201 and \$5,000 in FY 2021-22 and future years. DOC costs may also increase to the extent that CSP II is used, and decrease due to changes in earned time and escape offenses under the bill. Workload and costs in the Judicial Department will also decrease. These impacts are summarized in Table 2 and discussed below.

Table 2
Expenditures Under Bill 2

	FY 2020-21	FY 2021-22
Department of Corrections		
Private Prison Study	\$250,000	
Network and Servers	\$205,000	\$5,000
Total Cost	\$455,000	\$5,000

Department of Corrections. DOC costs are increased by \$455,000 in FY 2020-21 and \$5,000 in FY 2021-22 and thereafter. Other than the study and network/server costs listed below, it is assumed that appropriations adjustments will be handled through the annual budget process.

- *Private prison use study.* Based on the cost and scope of prior prison studies, it is estimated that \$250,000 will be needed in FY 2020-21 to conduct the private prison study. The DOC will submit a request for proposal (RFP) and enter into a contract with a vendor that will complete the study. Actual costs may differ depending on the results of the RFP.
- *Network and servers.* To fully utilize CSP II, \$205,000 is needed in FY 2020-21 for network and server upgrades, with ongoing maintenance costs of \$5,000 beginning in FY 2021-22. These funds will be reappropriated to the Office of Information Technology.
- *CSP II use.* Currently, it costs \$62.22 per day, per inmate to house an inmate in a private prison and between \$79.77 and \$132.11 per day, depending on the inmate's housing level, per inmate to house an inmate in a state run prison. Due to CSP II being designed for higher level inmates, it is assumed that only level 4 or 5 offenders would be housed at CSP II with a blended cost of \$120.42 per inmate per day for such offenders. Under this bill, DOC operating costs will increase by \$57.20 for each offender housed at CSP-II instead of a private prison facility. If all 918 operational CSP II beds were utilized, DOC operating costs would increase by \$110,456 per day or \$19.2 million annually (\$19.2 reflects only the increased cost of housing inmates at CSP II, full costs to operate CSP II are estimated to exceed \$41 million per year). Because this bill authorizes, but does not require, the use of CSP-II with a corresponding private prison bed reduction, this analysis assumes that any change in DOC appropriations resulting from the use of CSP II will be requested through the annual budget process.

- *Length of stay and operating impacts.* Beginning in FY 2020-21, this bill is expected to reduce the average length of stay in DOC for some offenders due to changes in prison population management measures and earned time, which will reduce future DOC operating costs. Because prison population management changes are dependent on Parole Board decisions and earned time changes are dependent on DOC earned time rules that have yet to be created, it is assumed any cost reductions will be requested through the annual budget process. DOC operating costs will also decrease due to offenders no longer being sentenced for a felony escape or attempted escape from community corrections or intensive supervised parole.

Judicial Department. This bill decreases trial court workload in the Judicial Department by a minimal amount from fewer hearings held in regard to escape and attempted escape offenses. Workload in the agencies that represent indigent offenders may also minimally decrease.

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 September 2019 Legislative Council Staff forecast, the measure will correspondingly decrease the amount refunded to taxpayers, which will first be issued via reimbursements to local governments, followed by sales tax refunds made available on income tax returns for tax years 2021 and 2022, depending on the total amount to be refunded each year.

Local Government Impact

Beginning in FY 2020-21, this bill is expected to decrease local government revenue, costs, and workload as described below. The exact impact to a particular local government will vary by jurisdiction.

District attorneys. The bill decreases costs and workload by a minimal amount for district attorneys to try cases of escape or attempted escape from community corrections or intensive supervised parole. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

County jails. This bill may decrease county jail costs from offenders convicted of misdemeanor escape which is a class 3 misdemeanor. However, because the courts have the discretion of incarceration or imposing a fine, the precise county impact cannot be determined. Under current law, the state reimburses county jails for housing state inmates. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.93.

Denver County Court. The bill decreases revenue, costs and workload for the Denver County Court, which is managed and funded by the City and County of Denver, from fewer misdemeanor escape cases under the bill. Probation services in the Denver County Courts may also experience a decrease in revenue, costs, and workload to supervise fewer persons within Denver County.

Effective Date

This bill does not contain an effective date. The fiscal note is based on an assumed effective date of July 1, 2020.

State Appropriations

For FY 2020-21, this bill requires a General Fund appropriation of \$455,000 to the Department of Corrections. Of this amount, \$205,000 is reappropriated to the Office of Information Technology.

State and Local Government Contacts

Alternate Defense Counsel
Information Technology
Public Safety

Corrections
Judicial

District Attorneys
Public Defender