



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

HB 20-1019

**REVISED
FISCAL NOTE**

(replaces fiscal note dated January 24, 2020)

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

Date: January 31, 2020
Bill Status: House Appropriations
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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 allows the Department of Corrections to house up to 650 inmates at Centennial Correctional Facility's south campus; requires a study on ending the use of private prisons; creates a new crime of unauthorized absence; and requires a new sentencing hearing when an offender is terminated from a community corrections program, among other provisions. Beginning in the current fiscal year, the bill will increase state expenditures. It will also impact state revenue and increase state and local government workloads on an ongoing basis.

Appropriation Summary: The bill requires appropriations of \$5.5 million in the current FY 2019-20 and \$21.0 million in FY 2020-21 to the Department of Corrections.

Fiscal Note Status: This fiscal note has been revised to reflect the bill as amended by the House Judiciary Committee.

**Table 1
State Fiscal Impacts Under HB 20-1019**

		FY 2019-20 <i>(current year)</i>	FY 2020-21	FY 2021-22
Revenue		-	-	-
Expenditures	General Fund	\$5,449,382	\$20,854,382	\$20,604,382
	Cash Funds	\$60,970	\$164,320	\$164,320
	Total	\$5,510,352	\$21,018,702	\$20,768,702
	Total FTE	37.0 FTE	210.4 FTE	210.4 FTE
Transfers		-	-	-
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 up to 650 beds at the south campus of Centennial Correctional Facility (Centennial South) to house close custody inmates. The DOC may also house inmates who are not close custody on the campus for a period of up to three months after the bill's effective date in order to facilitate the movement of inmates displaced as a result of prison closure or where the lower than close custody inmate is voluntary serving in a leadership role as part of departmental programming with the purpose of progressing close custody inmates to lower security levels. 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. 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, offender reintegration best practices, alternatives to incarceration, and recidivism reduction strategies, among other topics. While conducting the study, the DOC must solicit input from local communities and other interested parties or issue experts including, but not limited to, public safety professionals, victim's advocates, prosecutors, defense attorneys, and community re-entry providers. 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.

Sentencing hearings after terminations from a Community Corrections program. This bill requires sentencing courts to provide offenders with a new sentencing hearing after being terminated from a community corrections program.

Unauthorized absence. The bill creates a new crime of an unauthorized absence for a person on intensive supervision parole, in a community corrections program, or participating in a work release program and outlines different criminal offenses depending on prior conviction. Absence or attempted absence where the crime was violent or was a serious crime against a person is a class 6 felony. Where the crime does not meet these criteria, absence or attempted absence is charged as a class 3 misdemeanor. For any unauthorized absence where a violation of a permanent or temporary protection order is committed, the charge is a class 3 felony. The bill also makes conforming amendments to the victim rights act related to this new crime.

Incarceration of inmates from other states. The bill modifies the state law on accepting out-of-state prisoners into Colorado private prisons so that these out-of-state prisoners may only be received into the state if the DOC executive director, in consultation with the Governor, determines that exigent circumstances require that inmates be housed in a private contract prison facility in order to protect public health or safety.

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. Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

Prior conviction data. This bill creates the new offense of unauthorized absence from intensive supervised parole, community corrections, or a work release program, and removes this category of offender from the current offenses of escape and attempted escape. Unauthorized absence or attempt where the prior conviction was violent or was a serious crime against a person is a class 6 felony. For all other prior convictions, unauthorized absence or attempt is a class 3 misdemeanor. For an unauthorized absence where the offender also commits a violation of a permanent or temporary protection order, the charge is a class 3 felony. Currently, persons who commit unauthorized absences are charged under the escape statute. 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.

- *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.

Assumptions

DOC Supplemental. The provision of the bill authorizing the placement of inmates at the Centennial South correctional facility will require an estimated \$8,606,192 in the current FY 2019-20. A portion of these costs, \$3,095,840, are included in FY 2019-20 Department of Corrections supplemental appropriations bill to add 126 beds at Centennial South by mid-March. These costs are not included in the State Expenditures or State Appropriations sections of this

fiscal note because they arise under current law and are assumed to be funded through the supplemental. If these costs are not included in the supplemental appropriations bill, or if the supplemental appropriations bill is not adopted, FY 2019-20 appropriations required to implement this bill will increase by \$3,095,840.

Modifications to and new offenses. It is assumed that removing individuals in community corrections, intensive supervision parole, and work-release programs from the provisions of the escape and attempted escape offenses and instead charging them under the lesser penalties of unauthorized absence will result in cost savings to DOC. As this impact will occur in future fiscal years, the fiscal note assumes this will be addressed through the annual budget process.

State Revenue

Criminal fines and court fees. Beginning in FY 2020-21, a reduction in criminal fines is expected to result from the new criminal penalty of unauthorized absence being applied to individuals in community corrections, intensive supervision parole, or work-release programs instead of the existing penalties of escape or attempted escape. The new class 6 felony is subject to a fine between \$1,000 to \$100,000 and the class 3 misdemeanor is subject to a fine between \$50 to \$750. This is a reduction in potential fines compared to the existing fine penalty between \$1,000 to \$1,000,000 for the felony classes related to escape and attempted escape. Additionally, court fees may be increased for the additional sentencing hearing required under the bill when an individual is terminated from community corrections. Criminal fines and court fees are credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. 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 and cash fund expenditures in the DOC by approximately \$5.5 million in the current FY 2019-20 and \$20.9 million per year each year thereafter. Workload and potential costs for the Parole Board and the Judicial Department will also increase. These impacts are shown in Table 2 and discussed below.

Table 2
Expenditures Under HB 20-1019

	FY 2019-20* <i>(current year)</i>	FY 2020-21	FY 2021-22
Department of Corrections			
Personal Services	\$4,518,036	\$14,067,664	\$14,067,664
Operating and Capital Outlay	\$348,398	\$3,142,744	\$3,142,744
Employee Benefits and Supp. Retirement Payments**	\$643,918	\$3,393,974	\$3,393,974
End Use of Private Prison Study	-	\$250,000	-
Total Cost	\$5,510,352	\$20,854,382	\$20,604,382
Total FTE	37.0 FTE	210.4 FTE	210.4 FTE

* FY 2019-20 expenditures exclude \$3,095,840 that is currently included in the DOC supplemental budget bill for the operation of Centennial South.

** Because this bill requires over 20 FTE, certain costs that are typically considered centrally appropriated costs are appropriated directly in the bill instead of through the annual budget process. These include health, life, and dental benefits; short-term disability benefits; and supplemental retirement payments.

Department of Corrections. The DOC will hire 37.0 FTE permanent staff to operate up to 650 beds at the Centennial South correctional facility in the current fiscal year. Staff will increase to 210.4 FTE in FY 2020-21 and each year thereafter. Staff includes a warden, his or her support staff, maintenance staff, housing and security staff, food service staff, medical services staff, laundry staff, case management staff, mental health staff, business operations staff, education staff, recreation staff, drug and alcohol rehabilitation staff, parole staff, re-entry staff, and an inspector general. Operating costs are included for each staff section, as well as for transportation, utilities, pharmaceuticals, and inmate pay.

Pursuant to Legislative Council Staff and Joint Budget Committee policy, centrally appropriated costs for bills involving more than 20 FTE are appropriated in the bill rather than through the annual budget process. These costs, which include employee insurance and supplemental employee retirement payments for the DOC, are estimated to be \$643,918 in the current FY 2019-20 and \$3,393,974 in FY 2020-21 and each year thereafter.

- *End use of private prisons study.* 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.
- *Modifications to escape and attempted escape offenses.* Removing individuals in community corrections, intensive supervision parole program, and work-release from the provisions of the escape and attempted escape offenses and instead classifying these offenses as unauthorized absences will result in a future cost savings to DOC, as discussed in the Comparable Crime Analysis section above. Any change to the prison population will be addressed through the annual budget process.

State Board of Parole. 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.

Judicial Department. The trial courts of the Judicial Department will see a reduction in attempted escape-related cases and an increase in sentencing 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 unauthorized absences from intensive supervised parole, community corrections, or work release programs. Due to the reduced penalty associated with unauthorized absence, some cases will be more likely to plea bargain. The cumulative impact of the reclassification of these offenders to another category of offense may result in a cost savings up to 0.3 FTE Judicial Officer. However, the bill also creates an increase in sentencing hearings for individuals terminated from a community corrections program. There were 2,447 terminations from community corrections in FY 2017-18, 85 percent of which represent new case work under the bill. On average, these hearings are expected to take up to 30 minutes, necessitating up to 0.5 FTE Judicial Officer. Because the increase and decrease in workloads are within similar ranges, the fiscal note assumes no change in appropriations is required.

TABOR refunds. As discussed in the State Revenue section, the bill is expected to impact state General Fund obligations for TABOR refunds by an undetermined amount in FY 2020-21 and FY 2021-22. Under current law and the December 2019 Legislative Council Staff forecast, the bill will correspondingly impact 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 sentencing hearings and decrease related to the reduced penalties for unauthorized absence. 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

The bill requires the following appropriations to the Department of Corrections:

- for the current FY 2019-20, \$5,449,382 from the General Fund and \$60,970 from the Canteens and Library Fund; and
- for FY 2020-21, \$20,854,382 from the General Fund and \$164,320 from the Canteens and Library Fund.

State and Local Government Contacts

Alternate Defense Counsel
Information Technology
Public Safety

Corrections
Judicial

District Attorneys
Public Defender