



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated April 23, 2021)

| | |
|--|--|
| Drafting Number: LLS 21-0386 | Date: May 26, 2021 |
| Prime Sponsors: Rep. Woodrow; Gonzales-Gutierrez Sen. Lee; Rodriguez | Bill Status: Senate Appropriations |
| | Fiscal Analyst: Erin Reynolds 303-866-4146 Erin.Reynolds@state.co.us |

Bill Topic: PRE-TRIAL DETENTION REFORM

Summary of Fiscal Impact:

- | | |
|---|--|
| <input 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 |

The bill requires courts to hold an initial bond hearing with an arrested individual within 48 hours of arrival at a detention facility; allows hearings to be conducted online or by phone; creates the position of a bond hearing officer to conduct weekend and holiday hearings, with priority given to rural districts; and makes other changes to the monetary bond process. It will increase state expenditures and both increase and decrease local government expenditures on an ongoing basis.

Appropriation Summary: For FY 2021-22, the bill requires and includes appropriations totaling \$649,452 to multiple state agencies.

Fiscal Note Status: The revised fiscal note reflects the reengrossed bill.

**Table 1
State Fiscal Impacts Under HB 21-1280**

| | Budget Year FY 2021-22 | Out Year FY 2022-23 |
|---------------------------|---------------------------|------------------------|
| Revenue | - | - |
| Expenditures | | |
| General Fund | \$554,820 | \$838,059 |
| Cash Funds | \$94,632 | \$263,129 |
| Centrally Appropriated | \$75,735 | \$199,443 |
| Total Expenditures | \$725,187 | \$1,300,631 |
| Total FTE | 3.2 FTE | 9.5 FTE |
| Transfers | - | - |
| TABOR Refund | - | - |

Summary of Legislation

Initial bond setting hearings within 48 hours. Beginning April 1, 2022, courts are required to hold an initial bond setting hearing within 48 hours after an arrestee's arrival at a jail or holding center, with exceptions for emergency situations requiring court closure or circumstances that prevent the defendant from attending court. Use of audiovisual conferencing technology is permissible to expedite hearings, including prior to extradition of the defendant from one county to another, and telephone hearings may be conducted where internet access is lacking.

Monetary bond process. The bill makes the following changes to the monetary bond process:

- prohibits judicial officers from requiring bonds from being paid in the defendant's name;
- at a minimum, allows bonds to be paid by cash, money order, or cashier's check;
- requires the defendant and, where applicable, the surety, to receive a copy of the bond paperwork, a notice of rights related to bonding, and information regarding the defendant's next court date, and requires the person processing the bond to certify that the payor received a copy of this paperwork and to place a copy in the defendant's file;
- requires each jail to establish a way to pay bond online by January 1, 2022; and
- requires a defendant who has posted bond to be released no later than six hours, or provide notice and place documentation in a defendant's file about the reason for the delay.

Notice of legal rights related to posting money bond. Sheriffs must provide and post a notice of rights related to bonding in multiple places in a jail, online, and in the inmate handbook, including information about how to file a complaint regarding a violation. By October 1, 2021, each sheriff is required to:

- create written policies to comply with statutory bonding requirements, and to post these policies on the website, distribute to all staff, and train all staff who process bonds or interact with inmates on bonding policies;
- review and update the sheriff's website, signage, paperwork, and forms related to bonding to reflect current law; and
- file a certificate of compliance with the statutory bonding provisions with the Division of Criminal Justice in the Department of Public Safety.

Right to attorney. The bill affirms that defendants have the right to be represented by an attorney at their initial bond hearing, and specifies notifications, timelines, and information sharing for all parties involved that must occur before each initial bond hearing.

Bond hearing officers. The bill creates the position of bond hearing officer in the Judicial Department, to be appointed by a chief justice or their designee. The bond hearing officer, a magistrate, has the authority to conduct bond hearings for any state jurisdiction on weekends and holidays using an interactive audiovisual device that provides the public with the opportunity to view the hearing and the crime victim, if applicable, to participate in the hearing if desired. Judicial districts that contain a county designated as high priority or eligible by the Underfunded Courthouse Facility Cash Fund Commission are authorized to have a bond hearing officer conduct bond hearings on weekends and legal holidays. The State Court Administrator may also determine if judicial districts that do not meet the requirements above may request that a bond hearing officer hold bond hearings on weekends and legal holidays.

The State Court Administrator must post a bond hearing schedule on its website. For each case heard by a bond hearing officer, the arresting jurisdiction shall electronically transmit the arrest report, pretrial services information, and all other relevant information to the bond hearing officer prior to the hearing.

District Attorney Assistance for Bond Hearings Grant Program. The bill creates the District Attorney Assistance for Bond Hearings Grant Program and Cash Fund to be administered by the Colorado District Attorneys' Council (CDAC) and accounted for by the Department of Law. The grant program will provide funding to district attorney's offices to comply with the bill's weekend and holiday bond hearing requirements. The bill allows the CDAC to promulgate grant program rules. Grants must be awarded on or before October 1 of each year, subject to available appropriations. The General Assembly is required to annually appropriate necessary funds to the program based on a request made to the Joint Budget Committee by the CDAC by November 1 of each year.

Certificate of compliance. The Division of Criminal Justice is required to develop a certificate of compliance with statutory bonding provisions for sheriffs and maintain an online database of these certificates, policies and notices filed by a sheriffs.

Background

Senate Bill 19-191 required judicial districts to develop—with input from sheriffs, district attorneys, county commissioners—a plan for setting bond for all in-custody defendants within 48 hours of arrest: <http://www.leg.state.co.us/library/reports.nsf/ReportsDoc.xsp?documentId=4152B50E6213C29E872584C80056A493>. Since this report, the COVID-19 pandemic has expedited access to remote hearing technology in most judicial districts.

Data and Assumptions

Table 2 shows the average weekend and holiday caseloads in each judicial district under the bill.

**Table 2
 Average Weekend/Holiday Caseloads by Judicial District**

| District | Counties Included in Judicial District | Caseload** |
|-----------------|--|-------------------|
| 1 | Gilpin, Jefferson | 47 |
| 2 | Denver | 143 |
| 3* | Huerfano, Las Animas | 5 |
| 4 | El Paso, Teller | 40 |
| 5* | Clear Creek, Eagle, Lake, Summit | 13 |
| 6* | Archuleta, La Plata, San Juan | 8 |
| 7 | Delta, Gunnison, Hinsdale, Montrose, Ouray, San Miguel | 16 |
| 8 | Jackson, Larimer | 30 |
| 9* | Garfield, Pitkin, Rio Blanco | 12 |
| 10 | Pueblo | 20 |
| 11* | Chafee, Custer, Fremont, Park | 13 |
| 12* | Alamosa, Conejos, Costilla, Mineral, Rio Grande, Saguache | 8 |
| 13* | Kit Carson, Logan, Morgan, Phillips, Sedgwick, Washington, Yuma | 12 |
| 14* | Grand, Moffat, Routt | 6 |
| 15 | Baca, Cheyenne, Kiowa, Prowers | 4 |
| 16* | Bent, Crowley, Otero | 4 |
| 17 | Adams, Broomfield | 77 |
| 18 | Arapahoe, Douglas, Elbert, Lincoln | 64 |
| 19 | Weld | 32 |
| 20 | Boulder | 19 |
| 21 | Mesa | 8 |
| 22* | Dolores, Montezuma | 5 |

* These ten judicial districts have expressed initial interest in use of a bond hearing officer.

** Caseload numbers use weekend and holiday bond data collected from March 2019 through February 2020 by the Judicial Department.

Based on the data in Table 2, the fiscal note assumes that 10 judicial districts will utilize a bond hearing officer each weekend or holiday to review an estimated 87 cases per weekend.

It is further assumed that:

- hearings will be held on one weekend day and five holiday Mondays;
- courts and jails will provide dependable internet access; and
- caseloads will stay somewhat constant.

State Expenditures

The bill will increase state General Fund expenditures in the Judicial Department, the Office of the State Public Defender, and the Department of Public Safety. It will also increase Information Technology Cash Fund expenditures in the Judicial Department. Costs are shown in Table 3 and detailed below.

**Table 3
 Expenditures Under HB 21-1280**

| Cost Components | FY 2021-22 | FY 2022-23 |
|---|-------------------|--------------------|
| Judicial Department | | |
| Personal Services | \$258,448 | \$723,369 |
| Operating Expenses | \$15,050 | \$13,150 |
| Capital Outlay Costs | \$92,218 | \$4,000 |
| Streaming Services | \$47,100 | \$50,400 |
| Centrally Appropriated Costs ¹ | \$75,735 | \$199,443 |
| FTE – Personal Services | 5.5 FTE | 9.5 FTE |
| Judicial Subtotal | \$488,551 | \$990,362 |
| Office of the State Public Defender | | |
| Personal Services (Overtime) | \$27,836 | \$155,069 |
| Capital Outlay Costs | \$38,000 | - |
| Mileage | \$1,300 | \$5,200 |
| OSPD Subtotal | \$67,136 | \$160,269 |
| Department of Public Safety | | |
| Contractor Costs | \$19,500 | - |
| DPS Subtotal | \$19,500 | - |
| Colorado District Attorney's Council | | |
| Grant Program | \$150,000 | \$150,000 |
| CDAC Subtotal | \$150,000 | \$150,000 |
| Total | \$725,187 | \$1,300,631 |
| Total FTE | 3.2 FTE | 9.5 FTE |

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

Judicial Department. The department will have costs for bond hearing officers and support staff, as well as information technology staff and services, as discussed below.

- **Bond hearing officers.** About 10 judicial districts are expected to utilize the bond hearing officer to conduct an assumed 57 weekend and holiday bond hearings. These districts have an average of 87 bond hearings per week, as shown on Table 2. The department will create two regional officer positions, one serving the Western slope districts and the other serving the districts covering the Eastern plains, staffed by a bond hearing officer, a court judicial assistant, and an audio-visual support specialist. As such, staff will increase by 0.75 FTE state bond hearing officer,

0.5 FTE court judicial assistant, and 0.5 FTE virtual hearing support specialist at each location, for a total of 3.5 FTE. Each office will require software licenses to record bond hearings at a cost of \$3,000 per year per location. Additionally, depending on where the bond hearing officer is located, video conferencing equipment may be necessary at a cost of \$23,000. As this cost is still unknown, any equipment needs in this area will be addressed through the annual budget process.

The judicial districts opting to use a bond hearing officer are largely rural, multi-county districts where staff resources are limited. It is assumed that any caseload savings from use of a bond hearing officer will be offset by other costs and workload from meeting the 48-hour deadline during the traditional work week. Therefore, no significant change in costs is expected for these judicial districts.

- ***Court staff for districts not utilizing a bond hearing officer.*** For the remaining judicial districts not utilizing the bond hearing offices, the Judicial Department will establish a court staff pool of 2.0 FTE court judicial assistant to complete necessary data entry for cases in advance of the hearings.
- ***Technical support staff.*** The Judicial Department requires 4.0 FTE information technology support technicians, paid from the Information Technology Cash Fund, to support judicial districts not holding centralized hearings through the bond hearing officer. The technicians would provide support for court staff hardware issues; A/V hardware issues; network issues; software issues; technical training issues; and live stream monitoring and support.
- ***Streaming services.*** To meet the bill's requirement that viewing of the bond hearings are available to the public and crime victims may participate, the department will set up a streaming platform at a one-time cost of \$30,000, with ongoing costs of \$3,700 per month, or \$44,400 annually.
- ***Leased space.*** Additional costs for leased space may also be necessary, depending on where the offices are located. This will be addressed through the annual budget process.
- ***Existing resources.*** The Judicial Department will allow the arresting jurisdiction to electronically file the arrest report, pre-trial services information, and any relevant information to the bond hearing officer prior to the hearing. No change in appropriations is required for this system.

Office of the State Public Defender. The OSPD will require support staff to manage hearings not conducted by a centralized bond hearing officer, with existing attorneys covering weekend and holiday workloads in most cases, in exchange for compensation time. Personal services costs represent overtime hours calculated at \$22.50 per hour plus benefits for support staff in all but those 10 judicial districts that have expressed intent to use a bond hearing officer, and \$65 per hour plus benefits for attorney staff in the rural 7th and 15th judicial districts. Capital outlay costs include tablet devices at \$500 per tablet for an estimated 38 jails where hearings may be conducted remotely. Reimbursable mileage is estimated at 10,000 miles per year statewide at a cost of \$0.52 per mile. First-year costs are prorated for the bill's effective date and the General Fund pay date shift.

Department of Public Safety. The Division of Criminal Justice will hire a consultant who will convene a stakeholder group of jail administrators and sheriffs to collaboratively design the certificate of compliance; policies and practices; training curriculum; and public-facing website for posting these materials. This work is expected to take six weeks between July 1, 2021, and September 30, 2021, at a cost of \$19,500.

Grant funding for district attorney offices. The bill appropriates \$150,000 for grants to district attorney's offices in FY 2021-22. The fiscal note assumes that funding will continue into FY 2022-23, adjusted based on the CDAC's November 1 annual request made to the Joint Budget Committee. This funding is accounted for through the Department of Law and administered by the Colorado District Attorney's Council.

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 shown in Table 2.

Local Government

The bill will both increase and decrease local government costs starting in FY 2021-22. Impacts will vary by judicial district, as discussed below.

District attorneys. The bill will increase workload and costs for district attorneys. Impacts will vary depending on caseloads; how each office utilizes existing staff; what pre-trial and Victim's Rights Act services are currently available to the office on weekends and holidays; hardware and software needs; and mileage. It is expected that offices in urban districts will compensate attorneys by modifying schedules or providing compensation time, while in rural areas additional full-time or contract attorney support will likely be required. In addition to attorney compensation, support staff will likely require overtime pay for an estimated two hours per weekend or holiday in most districts. Overall, the fiscal note estimates an annual cost range between \$20,000 to \$25,000 for rural districts, and a workload increase spread among larger staffs in urban districts. In urban districts where staffing is insufficient or where the district covers multiple counties, costs of up to \$45,000 per year per county may be required. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population. District attorney offices may receive funding from the District Attorney Assistance for Bond Hearings Grant Program to offset these costs.

Sheriffs and county jails. The bill may increase workload and costs for sheriff's offices to open a courthouse on the weekend. In the event judicial discretion requires this, typically five sheriff deputies handle the offender transfer and courthouse operations. Sheriff's offices will also be required to provide relevant pre-trial services information to the court.

Overall, the bill is expected to result in expedited release of offenders, which will decrease county jail costs. However, jail staff will have new workload to closely track the timing of the bond setting, to ensure that attorneys have access to offenders held on bond, and to provide technology necessary for remote hearings. Purchase of improved internet services may be required in some cases.

Denver County Court. Similar to the state, the bill will increase costs and workload for the Denver County Court, managed and funded by the City and County of Denver to meet the requirements under the bill.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

For FY 2021-22, the bill requires and includes the following appropriations totaling \$649,452:

- \$318,184 General Fund and 2.2 FTE to the Judicial Department;
- \$94,632 and 1.0 FTE from the Information Technology Cash Fund to the Judicial Department;
- \$67,136 General Fund to the Office of the State Public Defender;
- \$19,500 General Fund to the Department of Public Safety; and
- \$150,000 General Fund to the Department of Law to pass-through to the Colorado District Attorney's Council.

State and Local Government Contacts

Counties

Joint Budget Committee Staff

Law

Public Defender

Sheriffs

District Attorneys

Judicial

Local Affairs

Public Safety

State Planning and Budgeting