

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 14-0774
Prime Sponsor(s): Rep. Wright

Date: February 19, 2014
Bill Status: House Judiciary
Fiscal Analyst: Kerry White (303-866-3469)

SHORT TITLE: IMPROVEMENTS TO PRETRIAL RELEASE

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue Cash Funds	<u>up to (\$3.7 million)</u> up to (\$3.7 million)	<u>up to (\$3.7 million)</u> up to (\$3.7 million)
State Expenditures General Fund Centrally Appropriated Costs**	<u>at least \$965,932</u> at least 865,919 100,013	<u>at least \$901,104</u> at least 786,709 114,395
FTE Position Change	8.0 FTE	8.8 FTE
Appropriation Required: \$865,919 - Multiple Agencies (FY 2014-15)		

* This summary shows changes from current law under the bill for each fiscal year. Parentheses indicate a decrease in funds.

** These costs are not included in the bill's appropriation. See the State Expenditures section for more information.

Summary of Legislation

This bill makes a number of changes to pretrial release procedures and conditions. The bill adds bonding agents to the list of parties allowed electronic read-only access to the court's name index and register of actions in public case types. The bill directs the Colorado Commission on Criminal and Juvenile Justice (CCJJ) to complete a comprehensive study of county pretrial services programs. It also makes a number of changes regarding the bonding process and the return of moneys to a defendant, as follows.

Bonds. The bill makes the following changes regarding bonds:

- limits the court's authority to determine the amount of bond and how a defendant may satisfy it;
- narrows the circumstances in which a court may release a defendant on a personal recognizance (PR) bond and sets conditions for PR bonds, including the availability of reliable information about a defendant's court history;
- establishes specific bond amounts for certain offenses, including \$10,000 for driving under restraint with a prior driving under the influence (DUI), \$50,000 for vehicular eluding with DUI, and \$50,000 for felony drug distribution;
- requires that a pretrial supervision program notify a surety of a defendant's violations or potential violations within two business days;
- removes the ability of the court to apply a defendant's cash bond towards court costs, fees, fines, or restitution owed, if the defendant is discharged from liability under terms of the bond; and
- creates an affirmative defense under the criminal code for bond agents who perform work in a reasonable manner.

Return of moneys to defendant. The bill requires that certain entities, including a compensated surety or the county or other agency, refund premiums, pretrial supervision costs, and bonding fees if, within 14 days of posting bond, charges are not filed or are dismissed.

Background

The counties of Adams, Alamosa, Boulder, Denver, Douglas, Jefferson, Larimer, Mesa, Montezuma, Pueblo, and Weld have pretrial services programs.

State Revenue

Beginning in FY 2014-15, this bill is anticipated to reduce cash fund revenue in the Judicial Department by up to \$3.7 million per year. Revenue losses will occur because the department will no longer be able to use cash bonds to pay outstanding court costs and because of the bill's requirement to provide bond agents with access to the Colorado State Data Access System (CSCDA).

Reduction in cash bond transfers. Under the bill, the transfer of cash bonds to pay outstanding court costs, fines, or restitution is prohibited. Over the last three years, an average of \$3,696,450 was received annually, including:

- \$871,137 in victim compensation and victim assistance program funds;
- \$822,593 in probation supervision fees for the Judicial Offender Services Fund;
- \$422,616 in DUI and traffic fines for the Highway Users Trust Fund and local governments;
- \$360,572 in restitution for crime victims;
- \$222,686 in fees for the Alcohol Evaluation and Supervision Cash Fund;
- \$126,631 in drug offender surcharges for the Correctional Treatment Cash Fund; and
- \$870,215 for other statutory purposes and cash funds.

It is assumed that in lieu of transferring the cash bond, offenders will choose to make other payment arrangements in some cases. The exact impact to state revenue has not been determined.

Fee revenue for data access. Under current practice, bond agents access certain judicial information through CoCourts and BIS, which are services that require a fee. The Judicial Department receives a percentage of the revenue charged for this service, which is credited to the IT Cash Fund. Under the bill, bond agents will instead access the CSCDA, for which no fees are assessed. Because it is not known how much of the revenue is attributable to bond agents using this service, the reduction in revenue has not been estimated.

State Expenditures

This bill will increase state General Fund expenditures by at least \$965,932 and 8.0 FTE in FY 2014-15 and by at least \$901,104 and 8.8 FTE in FY 2015-16. Costs are in the Judicial Department and Department of Public Safety. Table 1 and the discussion that follows address the costs of the bill.

Table 1. Expenditures Under HB14-1261		
Cost Components	FY 2014-15	FY 2015-16
Personal Services	\$589,324	\$642,899
FTE	8.0	8.8
Operating Expenses and Capital Outlay Costs	151,595	18,810
Pre-trial Programs Study	at least 125,000	at least 125,000
Centrally Appropriated Costs*	100,013	114,395
TOTAL	at least \$965,932	at least \$901,104

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

Judicial Department. Costs for the Judicial Department total \$740,919 and 8.0 FTE in FY 2014-15 and \$661,709 and 8.8 FTE in FY 2015-16. These costs are based on the following assumptions:

- the bill requires that sworn testimony be provided prior to the court granting a PR bond for counties without pretrial supervision programs;
- there are about 18,000 bond hearings conducted in counties without pretrial supervision programs per year; and
- under the bill, an additional 15 minutes per case will be required to review documents, hear testimony, and make determinations regarding eligibility for a PR bond.

Based on the assumed increase in court workload, an additional 2.2 FTE judicial officers are required. Each judicial officer requires a division clerk, law clerk, and court reporter. Standard operating (\$950 per year, per FTE) and capital outlay (\$4,703 per FTE in the first year) costs are provided for support staff. Judicial officers require operating costs of \$5,700 and capital outlay costs of \$46,170 (one-time) per FTE. Costs are prorated in the first year to account for the General Fund pay date shift.

It should be noted that workload is also likely to increase for revocation hearings if the defendant is remanded into custody by the bonding agent as a result of the new notification requirements. This increase in workload is anticipated to be accomplished within existing appropriations.

Department of Public Safety. The CCJJ in the Department of Public Safety is required to conduct a study of pretrial services programs. Based on similar studies of this scope, the fiscal note assumes that a contractor will be required at a cost of at least \$250,000 (\$125,000 per year). Because there have been no studies of this nature conducted recently, the fiscal note assumes the actual cost will be determined following a request for proposals (RFP) and that the department may be required to request additional appropriations through the annual budget process.

Other costs. As discussed in the State Revenue section above, a number of state programs currently receive revenue as a result of transfers from retained cash bonds. To the extent that revenue declines, some programs could require General Fund backfill. This amount has not been estimated. The fiscal note assumes that departments with affected cash funds and programs will request any additional appropriations required through the annual budget process.

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. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

Table 2. Centrally Appropriated Costs Under HB14-1261*		
Cost Components	FY 2014-15	FY 2015-16
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$59,088	\$64,565
Supplemental Employee Retirement Payments	40,925	49,830
TOTAL	\$100,013	\$114,395

*More information is available at: <http://colorado.gov/fiscalnotes>

Local Government Impact

Overall, this bill will affect local governments in three ways. First, it will increase workload for counties to coordinate and share information with the Department of Public Safety's contractor concerning the pretrial supervision program study.

Second, to the extent that there are more revocations due to the new requirement to notify a bond agent when a defendant violates the condition of his or her pretrial supervision program, costs for jails will increase. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails at a daily rate of \$51.45 to house state inmates. The impact of the increased workload and costs have not been estimated.

Third, the bill may reduce revenue transferred to local governments. As discussed above, certain costs are collected by transferring a defendant's cash bond, including moneys credited to the Highway Users Trust Fund, of which 35 percent is transferred to cities and counties for transportation projects. Moneys are also collected for probation supervision programs in the City and County of Denver. The exact reduction in revenue has not been estimated.

Effective Date

The bill takes effect July 1, 2014, and applies to arrests made or charges filed on or after this date.

State Appropriations

For FY 2014-15, the Department of Public Safety requires a General Fund appropriation of \$125,000. The Judicial Department requires an appropriation of \$740,919 General Fund and an allocation of 8.0 FTE.

Departmental Differences

The Department of Public Safety identified costs of \$508,000 to conduct the study of pretrial supervision programs. This estimate assumes that the project could take up to two years to complete. The fiscal note's costs are based on other similar state-wide projects, but acknowledges that costs may be higher. The fiscal note assumes that the actual cost of the study cannot be determined until the project is bid and vendor responses to the RFP are received.

State and Local Government Contacts

Corrections

District Attorneys

Judicial

Public Safety