

*Colorado Legislative Council Staff Fiscal Note*

**STATE and LOCAL  
REVISED FISCAL IMPACT**

(replaces fiscal note dated April 27, 2007)

**Drafting Number:** LLS 07-0522

**Date:** May 2, 2007

**Prime Sponsor(s):** Rep. Stephens  
Sen. Kopp

**Bill Status:** Senate Judiciary

**Fiscal Analyst:** Gary J. Estenson (303-866-4976)

**TITLE:** CONCERNING LEGAL PROCESS FOR PERSONS WHO ARE NOT LEGALLY PRESENT IN THIS COUNTRY.

<b>Fiscal Impact Summary</b>	<b>FY 2007-2008</b>	<b>FY 2008-2009</b>
<b>State Revenue</b>	\$0	\$0
<b>State Transfers or Diversions</b>		
General Fund Diversion to the Corrections Expansion Reserve Fund	(\$1,126,485)	(\$700,924)
<b>State Expenditures</b>		
General Fund*	\$0	\$248,823
Cash Funds Exempt Corrections Expansion Reserve Fund	1,126,485	700,924
<b>FTE Position Change</b>	0.0 FTE	0.0 FTE
<b>Effective Date:</b> Upon signature of the Governor.		
<b>Appropriation Summary for FY 2007-2008:</b> See State Appropriations section.		
<b>Local Government Impact:</b> See Local Government Impact section.		

\* *General Fund expenditures in FY 2008-09 are for operating expenses in the Department of Corrections and are subject to the 6 percent limit on spending.*

**Summary of Legislation**

The **reengrossed** bill states that if bond has been posted for a defendant in this country illegally and the defendant has been released to the United States Immigration and Customs Enforcement Agency (ICE), the court shall issue a warrant. The warrant will include all known aliases and the defendant's birth date. The warrant shall be entered in the Colorado Crime Information Center Database and the National Crime Information Center Database. The cases of defendants released on bond under these circumstances shall remain open indefinitely unless dismissed by motion of the district attorney. If the defendant has been convicted or pled guilty to crime, the defendant shall serve his or her sentence and pay all restitution prior to removal.

A law enforcement agency holding a defendant suspected of being here illegally is required to notify the defendant's bonding agent before bond is posted. If bond is posted, a bonding agent or other person posting bond is required to sign a waiver that the premium portion or fees paid by the defendant will be forfeited if the defendant is removed from the country.

## **State Revenue**

Under current law, if bond is posted for a defendant who is subsequently deported, the court refunds bond proceeds. The bill eliminates refunds for cash bonds and the portion of surety bonds paid by the defendant as a fee or premium. Instead, bond proceeds from these sources will be credited to the Corrections Expansion Reserve Fund for prison bed construction. Since bonding agents will be notified of a defendant's immigration status and will not profit off a bond transaction if an illegal resident is deported, the fiscal note assumes that, in most cases, bonding agents will not post surety bonds for defendants that may be deported.

However, to avoid prosecution these defendants will continue to post cash bond, particularly for less severe crimes where posting cash bond is affordable. While Legislative Council Staff has obtained state population, arrest rate, and cash bond amount data, the overall revenue impact will be based upon the number of defendants who post cash bond and are deported. Since deportation of criminal defendants is under the jurisdiction of the federal government and reliable deportation data could not be obtained, any increase in state revenue cannot be quantified.

## **State Expenditures**

The Department of Corrections will require \$1,126,485 GF in FY 2007-08 and \$949,207 GF in FY 2008-09.

***Department of Corrections (DOC).*** Costs to the DOC for incarceration will increase because the bill prohibits the court from dismissing felony charges against a person residing in this country illegally. Currently, if a person is here illegally and charged with a felony he or she may be deported prior to conviction and sentencing. Because the bill prohibits the courts from dismissing charges, more felony convictions will result. Since some inmates will re-offend after being released from prison, these persons will now also have a prior conviction on their record. This will increase the number of persons that return to prison for parole violations and the new felony sentences will be lengthier due to the person's prior criminal history. While the increase is difficult to estimate, based on information provided by the U.S. Department of Justice and state criminal arrest data, the fiscal note estimates that 9.0 additional inmates will be incarcerated annually. Since incarceration of some inmates will go beyond one year, the total number of inmates in prison is expected to increase in subsequent fiscal years.

If a defendant is convicted of a felony, he or she is transferred to a state correctional facility. If room is not available in the state facility, the defendant will remain in a local jail until a vacancy occurs. The state reimburses jails to house inmates sentenced to the DOC. Currently, some felony defendants are deported prior to conviction and sentencing. Since the bill eliminates this option, more felony defendants will be convicted and may remain in a local jail if room in a state facility is not available. However, the impact of this change is expected to be minimal.

***Judicial Branch.*** The time and workload associated with the issuance of a no-bond warrant is minimal. As such, the bill will not create additional expenditures for the Judicial Branch.

**Department of Public Safety.** The Department of Public Safety, Criminal Bureau of Investigation, controls and manages the Colorado Crime Information Center. While the bill will increase the number of entries into the system, the workload associated with this type of data entry is minimal and can be absorbed within existing resources.

**Judicial Branch & Legislative Service Agencies.** The bill requires legislative service agencies to conduct a post-enactment review of the number of criminal charges filed against illegal residents who are deported. The fiscal note assumes that data to perform this review will be provided by the Judicial Branch. While the Judicial Branch currently does not collect this information, minor changes to the branch's criminal history database can be made to allow the required information to be collected. These changes can be made within existing branch resources. Since the information required for post-enactment review will be provided by the Judicial Branch, the bill will not increase expenditures by Legislative Legal Staff, Legislative Council Staff, the Joint Budget Committee, or the State Auditor.

**Five-Year Fiscal Impact on Correctional Facilities**

The adoption of this bill will result in a net increase in periods of imprisonment in a state correctional facility. Section 2-2-703, C.R.S., requires that such bills cannot be passed without five years of appropriations for prison bed construction and operating costs. Construction costs are estimated to be \$125,165 per inmate bed. Operating costs are \$78.58 per bed per day or \$27,587 per bed per year. It should be noted that the construction costs reflect the funding needed to construct inmate beds in the fiscal year prior to when additional offenders are expected to enter the system. This lag accounts for the estimated time for criminal filing, trial, disposition, and sentencing.

Prison bed construction is funded through a General Fund transfer to the Capital Construction Fund, which is then transferred to the Corrections Expansion Reserve Fund. These appropriations are not subject to the 6 percent statutory General Fund appropriations limit. General Fund appropriations for operating costs are subject to the 6 percent limit.

However, in the event state correctional facilities are at capacity, Sections 17-1-102, 104.9, and 105.5, C.R.S., authorize the Department of Corrections to permanently place state inmates classified as medium custody and below in private contract prisons. The state pays private prisons at a rate of \$51.91 per bed per day or \$18,947 per bed per year.

<b>Five-Year Fiscal Impact On Correctional Facilities</b>				
<b>Fiscal Year</b>	<b>Inmate Bed Impact</b>	<b>Construction Cost</b>	<b>Operating Cost</b>	<b>Total Cost</b>
<b>FY 2007-08</b>	0.0	\$1,126,485	\$0	\$1,126,485
<b>FY 2008-09</b>	9.0	700,924	248,823	949,207
<b>FY 2009-10</b>	14.6	375,495	402,770	778,265
<b>FY 2010-11</b>	17.6	50,066	485,531	535,597
<b>FY 2011-12</b>	18.0	0	496,566	496,566
<b>Total</b>	<b>59.2</b>	<b>\$2,252,970</b>	<b>\$1,633,690</b>	<b>\$3,886,660</b>

### **Other State Impacts**

**General Fund for Highways and Capital Construction.** Based on the December 2006 Legislative Council Staff revenue forecast, there is enough revenue to fully fund the diversion to the Highway Users Tax Fund (HUTF) under the provisions of SB 97-1 for the next five fiscal years and have additional revenue flow into the General Fund excess reserve. Under the provisions of HB02-1310, revenue in the General Fund excess reserve is diverted two-thirds to the HUTF and one-third to capital construction. Construction costs for new prison beds are funded outside of the 6 percent appropriations limit. Therefore, the increased expenditure needed to fund this element of the bill would serve to reduce the amount of money available for diversion to the HUTF and to capital construction. In FY 2007-08, this amounts to \$375,495 from the HUTF and \$750,990 from capital construction.

### **Local Government Impact**

For the same reasons that the population will increase in state correctional facilities, the county jail population will also increase for defendants convicted of misdemeanors. Additionally, since counties also house defendants awaiting trial on felony charges, the number of felony defendants in county jails will also increase. Finally, if the Department of Corrections does not have space available, convicted felons are incarcerated in county jails until space becomes available in a state correctional facility. In FY 2007-08, the per day cost the state pays to house convicted felons in a county jail is \$48.96.

### **State Appropriations**

For FY 2007-08, the Department of Corrections will require an appropriation of \$1,126,485 from the Corrections Expansion Reserve Fund, plus the other five year costs identified in Table 1.

### **Departments Contacted**

Corrections  
Public Safety

Defense Attorneys  
Human Services

Judicial  
Local Affairs