



*Colorado Legislative Council Staff Fiscal Note*  
**STATE and LOCAL  
 FISCAL IMPACT**

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**Drafting Number:** LLS 09-0309 **Date:** January 29, 2009  
**Prime Sponsor(s):** Rep. Gardner B. **Bill Status:** House Judiciary  
 Sen. Mitchell **Fiscal Analyst:** Marc Carey (303-866-4102)

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**TITLE:** CONCERNING BAIL PROVISIONS FOR A PERSON WHO IS ILLEGALLY PRESENT IN THE UNITED STATES.

<b>Fiscal Impact Summary</b>	<b>FY 2009-2010</b>	<b>FY 2010-2011</b>
<b>State Revenue</b>		
<b>State Expenditures</b> General Fund	See State Expenditures section	
<b>FTE Position Change</b>	0.0 FTE	0.0 FTE
<b>Effective Date:</b> Upon signature of the Governor, or upon becoming law without his signature.		
<b>Appropriation Summary for FY 2009-2010:</b> None required at this time.		
<b>Local Government Impact:</b> None		

**Summary of Legislation**

For purposes of a hearing to determine whether to grant bail to a defendant that the court has probable cause to believe is in the country illegally, this bill establishes a rebuttable presumption that releasing the defendant on bail would put the public in significant peril. The bill also specifies criteria for the court to consider in determining whether such probable cause exists, and the type and amount of bond to set.

**State Expenditures**

**Judicial Branch.** This bill will cause an increase in workload for both the trial courts and for probation, and may require increased funding. At this time, it is not possible to determine the magnitude of the costs because the number of affected cases is unknown. It is assumed that the Branch will address any need for funding resulting from this bill through the annual budget process.

**Trial Courts.** The trial courts have a threshold of non-absorbable costs of 0.5 FTE judges, for which they require \$92,139 for personal services, capital and operating costs plus additional expenses for support staff. Thus, if the bill results in more than 1,040 hours of additional work for the trial courts, the branch will need to address this resource need through the annual budget process.

Currently, the immigration status of defendants for criminal cases in Colorado is generally unknown so no background data exists regarding the number of cases affected by this bill. However, the bill's requirements would only apply to those cases where the defendant seeks to post bond. It is assumed that a defendant would not seek to post bond if they don't have either the required money or documentation to prove their citizenship. In addition, Section 16-3-503, C.R.S., currently requires law enforcement to notify a bail bonding agent of probable cause that a defendant is in the country illegally, so many such defendants will already be denied bail by bondsmen.

Thus, the impact to the courts will be from cases where a defendant believes he can prove his or her immigration status, and requests the opportunity to do so. Such cases will cause an increase in workload for the courts in two ways:

- many bail hearings will be continued to allow the defendant time to obtain evidence to prove legal status; and
- if a person is denied bail, the trial is required to be held within 90 days. This will increase the number of pre-trial motions and hearings, which when paired with trials, will increase the demand for court resources.

*Probation Division.* The branch requires .3 FTE probation officers for every 15 new cases sentenced to probation at an annual cost of \$14,430. Thus, if the bill results in more than 15 additional offenders sentenced to probation, the branch will need to address this resource need through the annual budget process.

This bill will increase the number of defendants in jail awaiting court appearances due to the additional bonding restrictions. Because jail space is already limited, and because offenders convicted of a misdemeanor are ineligible for incarceration with the Department of Corrections, it is anticipated that courts will increasingly use probation as a sentencing option for such offenders.

### **Local Government Impact**

*County Jails.* Denying defendants bail will increase the demand for space at county jails as these defendants will need to be held longer. The length of stay could also increase if bail hearings are continued to allow defendants time to gather the necessary evidence to prove their citizenship. The magnitude of this local impact has not been quantified.

### **Departments Contacted**

Corrections

Judicial Branch

Public Safety