


Colorado Legislative Council Staff Fiscal Note
STATE and LOCAL
FISCAL IMPACT

Drafting Number: LLS 11-0489
Prime Sponsor(s): Rep. Barker
 Sen. Lambert

Date: February 2, 2011
Bill Status: House Judiciary
Fiscal Analyst: Clare Pramuk (303-866-2677)

TITLE: CONCERNING BOND CIRCUMSTANCES FOR DEFENDANTS WHO MAY BE IN THE COUNTRY ILLEGALLY.

Fiscal Impact Summary	FY 2011-2012	FY 2012-2013
State Revenue		
Cash Funds		
Capital Construction Fund		Increase
County Jail Assistance Fund		Increase
State Expenditures		
FTE Position Change		
Effective Date: August 10, 2011, if the General Assembly adjourns on May 11, 2011, as scheduled, and no referendum petition is filed.		
Appropriation Summary for FY 2011-2012: None required.		
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

Under current law, a bail bond agent can recover a bond if the defendant released on that bond is illegally present in the country, and is subsequently removed from the country. HB11-1088 eliminates that exemption and requires the bail bond agent to sign a waiver of understanding that if the defendant is removed from the country, the bond is forfeited.

The bill lowers the legal standard from "probable cause to find" to "reasonable grounds to believe" that a defendant is illegally present. Rather than applying the standard when a defendant is *charged* with a felony, or a class 1 or class 2 misdemeanor, it is applied when the defendant is *arrested* for one of those crimes.

A law enforcement agency holding a defendant believed to be illegally present in the country is required to notify the district attorney's office and any pretrial services agency of the defendant's presumed immigration status. If the defendant posts bond, the agency must notify the district attorney prior to notifying Immigration and Customs Enforcement (ICE) that the defendant is eligible for release to their custody.

Finally, when setting bail, the bill requires a judge to consider immigration status, including the presence of a hold from ICE, that could result in the defendant's removal from the country prior to standing trial.

State Revenue

The bill is expected to increase state cash funds revenue due to forfeiture of bonds when a defendant is removed from the country. Forfeited bonds are split 50/50 between the Capital Construction Fund for appropriation to the Corrections Expansion Reserve Fund and the County Jail Assistance Fund. The amount of the increase depends on the number of defendants who have bail posted by a bail bond agent and are then removed from the county. Because of the potential for forfeiture, it is possible that bail bond agents will decline to post bonds for individuals believed to be illegally present. Currently only about \$6,000 per year is forfeited and credited to the 2 cash funds.

Local Government Impact

This bill is expected to increase costs to county governments for incarceration of persons believed to be illegally present. The fiscal note assumes that if bail bond agents must forfeit their bonds when defendants are removed from the country, agents will no longer be willing to post bond for defendants believed to be illegally present. Judges who believe a defendant to be illegally present are expected to set higher bail amounts. As a result of these factors, an increased number of defendants will be held in county jails awaiting trial. The cost to house an offender in a county jail varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails.

Departments Contacted

Corrections Judicial Labor and Employment Law