

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
REVISED FISCAL IMPACT**

(replaces fiscal note dated February 27, 2013)

Drafting Number: LLS 13-0717

Date: April 4, 2013

Prime Sponsor(s): Rep. Levy
Sen. Ulibarri

Bill Status: Senate Judiciary

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TITLE: CONCERNING PRE-TRIAL RELEASE FROM CUSTODY.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015
State Revenue General Fund	Potential change — See State Revenue section.	
State Expenditures	See State Expenditures section.	
FTE Position Change		
Effective Date: Upon signature of the Governor, or upon becoming law without his signature.		
Appropriation Summary for FY 2013-2014: None required.		
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

This **reengrossed** bill repeals and reenacts, with amendments, the provisions of the criminal procedure code related to bail bonds. In general, the amendments require the court to emphasize individualized, empirical decisions when setting bonds and the conditions of release, and to presume that all persons in custody who are eligible for bond are eligible for bond with the least restrictive conditions that reasonably ensure the appearance of the defendant at trial and that protect the public safety. Specifically, the amendments:

- encourage the use of an empirically developed risk-assessment instrument for use in setting bond and the conditions of release, where practicable and available;
- require the court to consider the individual characteristics of each person in custody and his or her financial condition when setting bond and the conditions of release;
- eliminate the monetary bond schedule set in statute for certain types of offenses, and require that if a court uses a bond schedule, it must incorporate factors that consider the individualized risk and circumstances of a person in custody; and
- allow for bonds with secured monetary conditions when reasonable and necessary to ensure the appearance of the person in court or public safety.

In addition, the bill allows for a person who has been granted monetary bond and who is unable to meet the monetary conditions to file a reconsideration motion seven days after the bond has been set. This motion may only be filed if there is evidence that has not been considered that would change the bond conditions. The court must hold a hearing on the motion within 14 days after

its filing, but may summarily deny the motion if it finds that no additional evidence is presented. The court must consider the results of any empirically developed risk assessment instrument in considering the motion.

Under current law, bail may be denied if the defendant has been charged with a capital offense (*e.g.*, murder, kidnaping, or treason) and the court finds that there is evident proof or a presumption that the defendant committed the crime. Bail may also be denied if the defendant has been charged with or previously convicted of certain serious offenses and the court finds that the public would be placed in significant peril if the defendant were released. This bill adds several sexual assault offenses to the list of serious offenses that may be grounds for denying bail.

Finally, the bill places a greater emphasis on the use of pretrial services programs. Under current law, local governments are permitted to set up pretrial services programs to assess defendants and provide information and recommendations to the court concerning a defendant's risk to public safety and the likelihood that he or she will appear for trial. As of February 2013, there are 13 pretrial services programs in Colorado. Under the bill, the chief judge of any judicial district must endeavor to consult, on an annual basis, with the county or counties in his or her judicial district in an effort to support and encourage the development of pretrial services programs. Counties are in turn encouraged to consider the establishment of such programs, to the extent that it is practicable and within available resources. Any programs established must make all reasonable efforts to implement an empirically developed pretrial risk assessment tool and a structured decision-making design based on a defendant's charge and risk assessment score.

State Revenue

Because the bill may result in a decreased use of monetary bond conditions, state revenue has the potential to decrease. However, this decrease cannot be quantified at this time because it is unclear to what extent bond-setting practices will change as a result of this bill, particularly with regard to individuals whom the court deems likely to fail to appear. It is possible that revenue will not change significantly if the individuals who are likely to fail to appear and forfeit a bond amount continue to receive monetary conditions of bond after the bill's passage. Any money forfeited as a result of a failure to appear for trial currently goes to the General Fund, except in cases of driving under the influence and related crimes, where 50 percent of the money goes to the General Fund and 50 percent goes to the local law enforcement agency that brought the charges.

State Expenditures

The Judicial Branch is likely to see an increase in motions for bond reductions and in bond reduction hearings. However, because bond modification hearings are already permitted under current law and because the bill permits motions to be summarily denied, this fiscal note assumes that any increase in workload will be minimal and will not require additional appropriations. In addition, it is not anticipated that additional appropriations will be required to develop risk-assessment instruments.

Local Government Impact

To the extent that more people are released from custody as a result of the bill who would otherwise have remained in jail due to an inability to afford a monetary bond, pressures on county jail space will ease. 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 a daily rate of \$50.44 to house state inmates. Workload and FTE needs are likely to increase in counties that are part of judicial districts that establish pretrial services programs based on the language in the bill. However, the bill does not require the establishment of any additional pretrial services programs and recognizes that such programs may not be practicable within the available resources of judicial districts. The cost to establish and implement a pretrial services program will vary by judicial district.

Departments Contacted

Counties
Human Services
Local Affairs
Regulatory Agencies

Corrections
Judicial
Municipalities
Sheriffs

District Attorneys
Law
Public Safety