



To: Executive Board
From: Kevin Bommer, Executive Director
Date: March 23, 2021
Subject: Agenda for March 24, 2021 Special Board Meeting via Zoom

Attachments:
Meeting Minutes from February 19, 2021
SB 21-062 with S. Judiciary Amendments (Pre-Amended)
SB 21-062 State Fiscal Note

As previously announced, the CML Executive Board will meet **Wednesday, March 24, 2021 at 7:30 a.m. via Zoom.**

Adjournment is anticipated by 8:30 p.m. **If you have not already indicated that you are unable to attend this meeting, please contact Dianne Backhus (execassistant@cml.org).**

If you need assistance with Zoom *prior to the meeting*, please contact Allison Wright (awright@cml.org) or Kevin Bommer (kbommer@cml.org).

AGENDA

10:00 a.m. Call to order, President Widner.

Establishment of a quorum. (At least eight Board members must be present.)

Approval of the attached February 19, 2021 minutes.

SB 21-062, Criminal Justice: Jail Population Management Tools. The position voted on by the Board at the Feb. 19 meeting was approve the recommendation of the Policy Committee of “oppose unless amended” to remediate problematic language in the bill on monetary bond. Staff

was also asked to try to get certain felonies excluded from the mandate of the legislation, if at all possible, but it was not part of the motion. The bill passed Senate Judiciary on March 4 and awaits action (but is not yet calendared) in the Senate Appropriations Committee. Staff succeeded in getting the monetary bond amendments but was rejected in attempts to exclude the felonies and changed CML's position to "formerly opposed" based on the Board's prior direction. Based on requests from members of the Executive Board, the entire Board will revisit the Feb. 19 decision to determine any additional direction to staff or modification of the League's position on the legislation. (Meghan Dollar)

Adjournment

Next Meeting Date: Friday, April 23, 2020, 9:00 am via Zoom

MINUTES
CML Executive Board Meeting
February 19, 2021, Denver, Colorado
via Videoconference

Board members present: President Robert Widner, City Attorney, Centennial; Vice President Kathi Meyer, Council President Pro Tem, Steamboat Springs; Secretary/Treasurer Dale Hall, Mayor Pro Tem, Greeley; Larry Atencio, Council Vice President, Pueblo; Rick Bain, Mayor, Brush; Kendra Black, Council Member, Denver; Cathie Brunnick, Mayor Pro Tem, Lone Tree; Barbara Bynum, Mayor, Montrose; Greg Caton, City Manager, Grand Junction; Sharon Craig, Trustee, Ignacio; Leah Dozeman, Council Member, Wheat Ridge; A.J. Euckert, City Manager, Dacono; Wynetta Massey, City Attorney, Colorado Springs; Christian Morgan, Town Manager, Kersey; Andrea Samson, Council Member, Loveland; Jessica Sandgren, Mayor Pro Tem, Thornton; Katie Sickles, Town Manager, Bayfield; Russell Stewart, Mayor, Cherry Hills Village; Laura Weinberg, Mayor, Golden; Charlie Willman, Council Member, Glenwood Springs.

Guests: Senator John Hickenlooper; Shad Murib, State Director for Senator Hickenlooper.

Board members absent: Immediate Past President Liz Hensley, Council Member, Alamosa.

CML Staff members present: Kevin Bommer, Executive Director; David Broadwell, General Counsel; Meghan Dollar, Legislative Advocacy Manager; Courtney Forehand, Training and Marketing Specialist; Leslie Hough, Publication and Design Specialist; Meghan MacKillop, Legislative and Policy Advocate; Melissa Mata, Municipal Research Analyst; Karen Rosen, Meetings and Events Planner; Heather Stauffer, Legislative and Policy Advocate; Beauclarine Thomas, Legislative and Policy Advocate; Sarah Werner, Engagement and Communications Manager; Laurel Witt, Associate Counsel; Allison Wright, Finance & Administration Manager; Dianne Backhus, Executive Assistant.

The meeting was called to order by President Widner at 9:00 a.m. Attendance was taken and a quorum was established.

Charlie Willman MOVED AND Kathi Meyer SECONDED A MOTION TO APPROVE THE MINUTES AS SUBMITTED. The motion passed unanimously.

Executive Director Kevin Bommer informed the Board that a heater in the sprinkler room malfunctioned, allowing a pipe to burst during this week's ultra-low temperatures. Property damage appears to be relatively minor, and repairs will be done as soon as they can be scheduled.

Kevin provided more information on the cancellation of the June 2021 Annual Conference in Snowmass. The Annual Business meeting will still be held virtually in June. Meetings and Events Planner Karen Rosen reported on the plans in process for a fall special conference, both in-person and virtual, with details to be released soon.

U.S. Senator John Hickenlooper joined the Board from Washington, DC, along with his State Director Shad Murib. He shared his early experiences and committee assignments, discussed the proposed COVID relief plan, and identified where his local offices would be housed in various areas of Colorado. He also committed his support to keeping Space Command Headquarters in Colorado.

Legislative Advocacy Manager Meghan Dollar and her team provided in-depth information on recommendations from the Policy Committee's February 12th meeting. In addition, there were staff recommendations on several other bills introduced since the Legislature reopened this week. After discussion, a few items were set aside for separate votes. A MOTION WAS MADE by Dale Hall AND SECONDED by Katie Sickles THAT THE BOARD SUPPORT THE RECOMMENDATIONS OF THE POLICY COMMITTEE AND STAFF ON THE BALANCE OF THE ITEMS PRESENTED. The motion passed unanimously.

Of the items set aside, three were from the Policy Committee and one was from the newer action items. The Committee had recommended support of the Nurse Intake of 911 Calls Grant Program. Charlie Willman MOVED AND Dale Hall SECONDED A MOTION TO CHANGE CML'S POSITION TO 'MONITOR.' The motion passed with two members opposing. Second, the Committee recommended an 'oppose unless amended position' on the Jail Population Management Tools bill. Rick Bain MOVED AND Christian Morgan SECONDED A MOTION TO CHANGE CML'S POSITION TO 'OPPOSE.' After further discussion, Rick Bain WITHDREW HIS MOTION and the Board voted to adopt the Committee recommendation and further requested staff to try to get additional amendments, if possible. In addition, the Committee had recommended staff discretion to support the Management of Plastic Products legislation. After more discussion, Laura Weinberg MOVED AND Kathi Meyer SECONDED A MOTION TO CONCUR WITH THE POLICY COMMITTEE'S RECOMMENDATION OF 'STAFF DISCRETION TO SUPPORT.' The motion passed with two members opposing. From the supplemental action items, proposed legislation would allow a single finalist to be named to a state or local chief executive position, without public disclosure of other candidates' personal application materials. CML staff had recommended a position of 'staff discretion to support.' Board members indicated a stronger preference for support. Russell Stewart MOVED AND Barbara Bynum SECONDED A MOTION TO CHANGE THE CML POSITION TO 'SUPPORT.' The motion passed unanimously.

Finance Manager Allison Wright presented an update on member dues and reported on year-end financials. Only four municipalities have not yet paid their 2021 dues. All have received phone calls and have indicated that the payments are in process and should be received at CML soon. The financial report confirms that CML's fiscal health remains strong despite the impacts of COVID-19.

Municipal Research Analyst Melissa Mata provided a recap of books, booklets and Knowledge Now white papers released in 2020. The revamped interactive *2021 State of Our Cities and Towns Report* took a closer look at the impacts of COVID-19 on member municipalities, and the report was utilized by several news outlets as well as Colorado's congressional delegation. Melissa also informed the Board of the publications scheduled to be written or updated in 2021. One publication – *Home Rule Matrix* – will be moved to an online resource. She also requested input from Board members on potential topics of interest for upcoming Knowledge Now white papers.

Kevin Bommer gave a brief Executive Director report. He provided requested training the prior evening to elected officials in Hayden. He reiterated that the Annual Business Meeting will be held in June to meet Board by-law requirements for Board terms/elections, voting on the CML Policy Statement, and announcement of 2022 dues. The next scheduled Board meeting will be on Friday, April 23rd. There will also be a Board meeting after the virtual Annual Business Meeting in June.

A MOTION WAS MADE by Charlie Willman AND SECONDED by Kathi Meyer TO ADJOURN THE MEETING. The motion passed unanimously, and the meeting was adjourned at 11:55 a.m.

Respectfully submitted,

Dale Hall
Secretary/Treasurer

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 21-0193.02 Michael Dohr x4347

SENATE BILL 21-062

SENATE SPONSORSHIP

Lee,

HOUSE SPONSORSHIP

Benavidez,

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES TO SAFELY REDUCE JAIL POPULATIONS BY**
102 **AMENDING PROCEDURES PRIOR TO CONVICTION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill gives a peace officer the authority to issue a summons and complaint for any offense committed in the officer's presence, or if not committed in the officer's presence, for any offense that the officer has probable cause to believe was committed and probable cause to believe was committed by the person charged, unless arrest is statutorily required or the offense is a crime of violence.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

The bill prohibits a peace officer from arresting a person based solely on the alleged commission of a traffic offense; petty offense; municipal offense; misdemeanor offense; a class 4, 5, or 6 felony; or a level 3 or 4 drug felony unless:

- A custodial arrest is statutorily required;
- The officer is unable to sufficiently verify the individual's identity absent a custodial arrest;
- The person was convicted for a violation of section 42-4-1301, Colorado Revised Statutes, in the previous 12 months; or
- The offense is a felony or a victims' rights crime, the offense includes an element of illegal possession or use of firearm, the offense constitutes unlawful sexual behavior, or the offense is a violation a temporary or regular extreme risk protection order, a violation of a credible threat to a school, or a violation of eluding in a vehicle and:
 - The arresting officer records in the arrest documents a reasonable suspicion to conclude the person poses a threat to the safety of another, absent custodial arrest; or
 - The arresting officer records in the arrest documents a reasonable suspicion to conclude the person has indicated a clear unwillingness to cease and desist in criminal behavior, absent custodial arrest.

The bill prohibits a court from issuing a monetary bond for a misdemeanor offense; municipal offense; class 4, 5, or 6 felony; or level 3 or 4 drug felony unless the court finds the defendant will flee prosecution or threaten the safety of another and no other condition of release can reasonably mitigate the risk. The bill requires the court to issue a personal recognizance bond when the defendant fails to appear unless the defendant has failed to appear 3 or more times in the case. The bill requires the court to issue a personal recognizance bond in a failure to comply with conditions probation hearing unless it is based on a commission of a new crime.

The bill authorizes sheriffs to actively manage their jail populations in order to keep the population as low as possible while maintaining community safety, including the authority to establish jail admission standards that include offense-based admission standards that limit jail admissions.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 16-2-104 as

1 follows:

2 **16-2-104. Issuance of summons and complaint.** (1) (a) ~~A~~
3 ~~summons and complaint may be issued by any peace officer for an~~
4 ~~offense constituting a misdemeanor, or a petty offense committed in his~~
5 ~~presence or, if not committed in his presence, which he has probable~~
6 ~~cause to believe was committed and probable cause to believe was~~
7 ~~committed by the person charged~~ A SUMMONS AND COMPLAINT MAY BE
8 ISSUED BY ANY PEACE OFFICER FOR ANY OFFENSE COMMITTED IN THE
9 OFFICER'S PRESENCE, OR IF NOT COMMITTED IN THE OFFICER'S PRESENCE,
10 A WARRANTLESS ARREST FOR ANY OFFENSE THAT THE OFFICER HAS
11 PROBABLE CAUSE TO BELIEVE WAS COMMITTED AND PROBABLE CAUSE TO
12 BELIEVE WAS COMMITTED BY THE PERSON CHARGED, UNLESS ARREST IS
13 STATUTORILY REQUIRED OR THE OFFENSE IS A CRIME OF VIOLENCE, AS
14 DEFINED IN SECTION 18-1.3-406.

15 (b) A PEACE OFFICER SHALL NOT SUBJECT A PERSON TO A
16 WARRANTLESS DETENTION-ELIGIBLE ARREST BASED SOLELY ON THE
17 ALLEGED COMMISSION OF A TRAFFIC OFFENSE; PETTY OFFENSE; MUNICIPAL
18 OFFENSE; MISDEMEANOR OFFENSE; A CLASS 4, 5, OR 6 FELONY; OR A LEVEL
19 3 OR 4 DRUG FELONY UNLESS:

20 (I) A DETENTION-ELIGIBLE ARREST IS STATUTORILY REQUIRED;

21 (II) THE OFFICER IS UNABLE TO SUFFICIENTLY VERIFY THE
22 INDIVIDUAL'S IDENTITY ABSENT A DETENTION-ELIGIBLE ARREST;

23 (III) THE OFFICER HAS PROBABLE CAUSE TO BELIEVE THE PERSON
24 VIOLATED SECTION 42-4-1301 AND THE PERSON WAS CONVICTED FOR A
25 VIOLATION OF SECTION 42-4-1301 IN THE PREVIOUS FIVE YEARS OR WAS
26 PREVIOUSLY CONVICTED FOR A VIOLATION OF SECTION 42-4-1301 THREE
27 OR MORE TIMES; EXCEPT THAT A PEACE OFFICER MAY SUBJECT A PERSON

1 TO CUSTODIAL ARREST BASED ON PROBABLE CAUSE TO BELIEVE THE
2 PERSON VIOLATED SECTION 42-4-1301 WHEN A DETOXIFICATION FACILITY,
3 SOBER PARTY, OR HOSPITAL IS UNAVAILABLE AND THE OFFICER HAS
4 REASONABLE SUSPICION TO CONCLUDE THE PERSON POSES A SUBSTANTIAL
5 RISK TO THE SAFETY OF ANOTHER, ABSENT CUSTODIAL ARREST; OR

6 (IV) THE OFFENSE IS A FELONY, THE OFFENSE IS A VICTIMS' RIGHTS
7 ACT CRIME, AS DEFINED IN SECTION 24-4.1-302 (1), THE OFFENSE
8 INCLUDES AN ELEMENT OF ILLEGAL POSSESSION OR USE OF FIREARM, THE
9 OFFENSE CONSTITUTES UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN
10 SECTION 16-22-102 (9), THE OFFENSE IS FAILURE TO REGISTER AS A SEX
11 OFFENDER IN VIOLATION OF SECTION 18-3-412.5, OR THE OFFENSE IS A
12 VIOLATION SECTION 13-14.5-111, SECTION 18-9-109 (6), OR SECTION
13 42-4-1413 AND:

14 (A) THE ARRESTING OFFICER RECORDS IN THE ARREST DOCUMENTS
15 A REASONABLE SUSPICION TO CONCLUDE THE PERSON POSES A THREAT TO
16 THE SAFETY OF ANOTHER, ABSENT DETENTION-ELIGIBLE ARREST; OR

17 (B) THE ARRESTING OFFICER RECORDS IN THE ARREST DOCUMENTS
18 A REASONABLE SUSPICION TO CONCLUDE THE PERSON HAS INDICATED A
19 CLEAR UNWILLINGNESS TO CEASE AND DESIST IN CRIMINAL BEHAVIOR,
20 ABSENT DETENTION-ELIGIBLE ARREST.

21 (c) THIS SECTION CREATES OBLIGATIONS UPON ARRESTING
22 OFFICERS. THIS SUBSECTION (1) DOES NOT REQUIRE A COURT OR A SHERIFF
23 TO PERFORM A REVIEW TO ENSURE COMPLIANCE WITH THIS SECTION AS IT
24 RELATES TO JAIL ADMISSIONS. THIS SUBSECTION (1) DOES NOT CREATE A
25 PRIVATE RIGHT OF ACTION FOR VIOLATIONS OF THIS SUBSECTION OR
26 PROVIDE A BASIS TO SEEK DISMISSAL OR SUPPRESSION OF EVIDENCE IN A
27 CRIMINAL CASE.

1 (2) Except for penalty assessment notices, which ~~shall~~ MUST be
2 handled according to the procedures set forth in section 16-2-201, a copy
3 of a summons and complaint ~~so~~ issued ~~shall~~ PURSUANT TO THIS SECTION
4 MUST be filed immediately with the county court before which appearance
5 is required, and a second copy ~~shall~~ MUST be given to the district attorney
6 or deputy district attorney for the county.

7 (3) (a) AS USED IN THIS SECTION, "DETENTION-ELIGIBLE ARREST"
8 MEANS WHEN A PEACE OFFICER ARRESTS A PERSON AND TAKES THE
9 PERSON INTO PHYSICAL CUSTODY FOR THE PURPOSE OF TRANSPORTING THE
10 PERSON TO BE HELD IN A CITY, CITY AND COUNTY, OR COUNTY JAIL OR
11 DETENTION FACILITY UNTIL SUCH TIME AS THE PERSON EITHER APPEARS
12 BEFORE A COURT OR IS RELEASED ON BOND.

13 (b) "DETENTION-ELIGIBLE ARREST" DOES NOT INCLUDE:

14 (I) WHEN A PEACE OFFICER TRANSPORTS A PERSON TO A CITY, CITY
15 AND COUNTY, OR COUNTY JAIL OR DETENTION FACILITY IN ORDER TO HAVE
16 THE PERSON SUBMIT TO FINGERPRINTING, PHOTOGRAPHING, DNA TESTING,
17 OR TESTING OF BLOOD, BREATH, SALIVA OR URINE PRIOR TO BEING
18 RELEASED ON A SUMMONS AND COMPLAINT;

19 (II) WHEN A PEACE OFFICER TRANSPORTS A PERSON FOR ANY
20 OTHER LAWFUL PURPOSE OR TO ANY OTHER FACILITY TO WHICH A PEACE
21 OFFICER HAS _____ AUTHORITY TO TRANSPORT SUCH AS A HOSPITAL,
22 DETOXIFICATION FACILITY, OR BEHAVIORAL OR MENTAL HEALTH FACILITY,
23 UNLESS THE PEACE OFFICER INTENDS TO HAVE THE PERSON __ HELD IN JAIL
24 UPON DISCHARGE FROM SUCH FACILITY.

25 **SECTION 2.** In Colorado Revised Statutes, 16-4-113, **add** (3)
26 and (4) as follows:

27 **16-4-113. Type of bond in certain cases.** (3) (a) EXCEPT AS

1 PROVIDED FOR IN SUBSECTION (2) OF THIS SECTION, FOR A DEFENDANT
2 CHARGED WITH A CLASS 4, 5, OR 6 FELONY; A LEVEL 3 OR 4 DRUG OFFENSE;
3 A MISDEMEANOR; OR A MUNICIPAL OFFENSE, A COURT SHALL NOT IMPOSE
4 A MONETARY CONDITION OF RELEASE UNLESS THE COURT FINDS ON THE
5 RECORD THAT THERE IS A SUBSTANTIAL RISK THAT THE DEFENDANT WILL
6 FLEE PROSECUTION OR THREATEN THE SAFETY OF ANOTHER PERSON AND
7 NO OTHER CONDITION OF RELEASE CAN REASONABLY MITIGATE THE RISK.

8 (b) (I) WHEN A DEFENDANT APPEARS BEFORE THE COURT BASED
9 ON A FAILURE TO APPEAR WARRANT, THE COURT SHALL GRANT THE
10 DEFENDANT A PERSONAL RECOGNIZANCE BOND UNLESS THE DEFENDANT:

11 (A) FAILED TO APPEAR THREE OR MORE TIMES IN THE CASE; OR

12 (B) FAILED TO APPEAR FOR ANY PROCEEDING FOR WHICH A
13 WITNESS WAS SUBPOENAED AND APPEARED OR FOR WHICH A CIVILIAN
14 WITNESS WAS PLACED ON CALL BY THE PROSECUTION; OR

15 (C) INTENTIONALLY FAILED TO APPEAR FOR THE PURPOSE OF
16 INTERFERING WITH OR DETERRING VICTIM OR WITNESS PARTICIPATION IN
17 THE CASE.

18 (II) THE COURT MAY IMPOSE MONETARY BOND IN THE
19 CIRCUMSTANCES DESCRIBED IN SUBSECTIONS (3)(b)(I)(A) TO (3)(b)(I)(C)
20 OF THIS SECTION WHEN THE COURT FINDS NO OTHER CONDITIONS OF
21 RELEASE CAN REASONABLY MITIGATE THE RISK OF FUTURE FAILURE TO
22 APPEAR.

23 (c) (I) WHEN A PROBATIONER APPEARS BEFORE THE COURT ON A
24 WARRANT FOR FAILURE TO COMPLY WITH CONDITIONS OF PROBATION FOR
25 WHICH THE UNDERLYING BEHAVIOR IS NOT A CRIMINAL OFFENSE, THE
26 COURT SHALL GRANT THE PROBATIONER A PERSONAL RECOGNIZANCE
27 BOND UNLESS:

1 (A) THE VIOLATION WAS A FAILURE TO COMPLY WITH ANY COURT
2 ORDERED TREATMENT RELATED TO A SEX OFFENSE OR A CRIME OF
3 DOMESTIC VIOLENCE, AND THE COURT FINDS ON THE RECORD THAT THE
4 FAILURE TO COMPLY POSES A SUBSTANTIAL RISK TO THE SAFETY OF
5 ANOTHER AND WAS NOT BASED SOLELY ON AN INABILITY TO PAY; OR

6 (B) THE DEFENDANT HAS ALREADY HAD PROBATION REVOKED FOR
7 FAILURE TO COMPLY IN THE CASE.

8 (II) _____ NOTHING IN THIS SUBSECTION (3) LIMITS A COURT'S
9 AUTHORITY TO REVOKE PROBATION BASED ON FAILURE TO COMPLY
10 PURSUANT TO SECTION 16-11-206.

11 (d) NOTWITHSTANDING THE PROVISIONS THIS SUBSECTION (3), THIS
12 SECTION DOES NOT PROHIBIT THE RELEASE OF A PERSON PURSUANT TO
13 LOCAL PRETRIAL RELEASE POLICIES THAT REQUIRE PAYMENT OF A
14 MONETARY CONDITION OF RELEASE PRIOR TO AN INDIVIDUALIZED
15 DECISION BY A JUDGE, A PRETRIAL OFFICER, A BONDING AND RELEASE
16 COMMISSIONER, OR ANY OTHER JUDICIAL OFFICER.

17 (e) NOTHING IN THIS SUBSECTION (3) LIMITS THE COURTS
18 AUTHORITY TO SET MONEY BOND WHEN THE COURT FINDS A DEFENDANT
19 IS LIKELY TO FLEE PROSECUTION AND THAT THERE ARE NO OTHER
20 CONDITIONS OF RELEASE THAT CAN REASONABLY MITIGATE THAT RISK."

21 (4) AS USED IN THIS SECTION, "FLEE PROSECUTION" MEANS
22 PLANNING OR ATTEMPTING TO INTENTIONALLY EVADE PROSECUTION BY
23 CONCEALING ONESELF. SIMPLE, PAST NONAPPEARANCE IN COURT ALONE
24 IS NOT EVIDENCE OF FUTURE INTENT TO FLEE PROSECUTION. CITIZENSHIP
25 STATUS ALONE IS NOT EVIDENCE OF FUTURE INTENT TO FLEE
26 PROSECUTION.

27 **SECTION 3.** In Colorado Revised Statutes, **add** 30-10-528 as

1 follows:

2 **30-10-528. Sheriff - jail population management.** THE GENERAL
3 ASSEMBLY ENCOURAGES AND AUTHORIZES SHERIFFS TO ACTIVELY
4 MANAGE THEIR JAIL POPULATIONS IN ORDER TO KEEP THE POPULATION AS
5 LOW AS POSSIBLE WHILE MAINTAINING COMMUNITY SAFETY, INCLUDING
6 THE AUTHORITY TO ESTABLISH JAIL ADMISSION STANDARDS THAT INCLUDE
7 OFFENSE-BASED ADMISSION STANDARDS THAT LIMIT JAIL ADMISSIONS.

8 **SECTION 4.** In Colorado Revised Statutes, 16-5-206, **repeal**
9 (1.5) as follows:

10 **16-5-206. Summons in lieu of warrant.** (1.5) (a) ~~Except in class~~
11 ~~1, class 2, class 3, and class 4 felonies; in crimes described in section~~
12 ~~24-4.1-302 (1), C.R.S.; and in unclassified felonies punishable by a~~
13 ~~maximum penalty of more than ten years, a law enforcement officer may~~
14 ~~issue a summons commanding the appearance of the defendant in lieu of~~
15 ~~a warrant for his or her arrest based on probable cause if:~~

16 ~~(I) The local district attorney consents to such procedure and has~~
17 ~~developed and approved criteria for the issuance of such a summons~~
18 ~~pursuant to this subsection (1.5);~~

19 ~~(II) There is a reasonable likelihood that the defendant will~~
20 ~~appear;~~

21 ~~(III) The defendant has had no felony arrests during the preceding~~
22 ~~five years;~~

23 ~~(IV) There is no allegation that the defendant used a deadly~~
24 ~~weapon as defined in section 18-1-901 (3)(c), C.R.S., in the commission~~
25 ~~of the crime; and~~

26 ~~(V) There are no outstanding warrants for the defendant's arrest.~~

27 ~~(b) No later than ten days after a law enforcement officer issues~~

1 a summons pursuant to this subsection (1.5), he or she shall deliver a copy
2 to the court and to the office of the district attorney where jurisdiction
3 lies.

4 (c) When the procedure described in this subsection (1.5) is used,
5 an information or complaint may be filed in open court on the date
6 specified in the summons.

7 **SECTION 5. Act subject to petition - effective date.** This act
8 takes effect January 1, 2022; except that, if a referendum petition is filed
9 pursuant to section 1 (3) of article V of the state constitution against this
10 act or an item, section, or part of this act within the ninety-day period
11 after final adjournment of the general assembly, then the act, item,
12 section, or part will not take effect unless approved by the people at the
13 general election to be held in November 2022 and, in such case, will take
14 effect on the date of the official declaration of the vote thereon by the
15 governor.



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number: LLS 21-0193 Date: March 1, 2021
Prime Sponsors: Sen. Lee Bill Status: Senate Judiciary
Rep. Benavidez Fiscal Analyst: Erin Reynolds | 303-866-4146
Erin.Reynolds@state.co.us

Bill Topic: JAIL POPULATION MANAGEMENT TOOLS

- Summary of Fiscal Impact:
[X] State Revenue [] TABOR Refund
[X] State Expenditure [X] Local Government
[] State Transfer [] Statutory Public Entity

This bill authorizes peace officers to issue a court summons in lieu of making an arrest; limits the offenses that may result in arrest; prohibits the court from imposing a monetary condition of release unless certain conditions are met; and authorizes sheriffs to manage their jail populations by establishing admission standards. Beginning in FY 2021-22, the bill minimally reduces state revenue, increases state expenditures, and both increases and reduces local expenditures.

Appropriation Summary: For FY 2021-22, the bill requires an appropriation of \$93,185 to the Judicial Department.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under SB 21-062

Table with 3 columns: Category, Budget Year FY 2021-22, and Out Year FY 2022-23. Rows include Revenue, Expenditures (General Fund, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and TABOR Refund.

Summary of Legislation

This bill authorizes peace officers to issue a court summons in lieu of arrest; limits the offenses that may result in arrest; prohibits the court from imposing any monetary condition of release except in certain limited cases; and authorizes sheriffs to manage their jail populations by establishing standards for admission. These provisions are described in more detail below.

Summons and complaint. The bill gives a peace officer the authority to issue a summons and complaint for certain offenses, unless arrest is statutorily required or the offense is a crime of violence.

Arrest prohibitions. The bill prohibits a peace officer from subjecting a person to custodial arrest in certain circumstances. "Arrest" is defined to include transport of a person to a jail for confinement in advance of court proceedings, but to exclude transport of a person to a jail for the purpose of fingerprinting, photography, DNA testing, or blood alcohol testing, and transport of a person to a hospital or behavioral or mental health facility pursuant under statutory or court-ordered authority.

Under the bill, a peace officer may not arrest a person based solely on the alleged commission of a traffic offense; petty offense; municipal offense; misdemeanor offense; a class 4, 5, or 6 felony; or a level 3 or 4 drug felony unless:

- a custodial arrest is statutorily required;
- the officer is unable to sufficiently verify the individual's identity absent a custodial arrest;
- the person was convicted of driving under the influence in the previous 12 months; or
- the offense is a felony or a victims' rights crime, the offense includes an element of illegal possession or use of firearm, the offense constitutes unlawful sexual behavior, or the offense is a violation a temporary or regular extreme risk protection order, a violation posing a credible threat to a school, or a violation of eluding in a vehicle and:
 - the arresting officer records in the arrest documents a reasonable suspicion to conclude the person poses a threat to the safety of another, absent custodial arrest; or
 - the arresting officer records in the arrest documents a reasonable suspicion to conclude the person has indicated a clear unwillingness to cease and desist in criminal behavior, absent custodial arrest.

Bond prohibitions. The bill prohibits a court from issuing a monetary bond for a misdemeanor offense; municipal offense; class 4, 5, or 6 felony; or level 3 or 4 drug felony unless the court finds the defendant will flee prosecution or threaten the safety of another and no other condition of release can reasonably mitigate the risk. The bill requires the court to issue a personal recognizance bond when the defendant fails to appear unless the defendant has failed to appear three or more times in the case. The bill requires the court to issue a personal recognizance bond in a failure to comply with conditions probation hearing unless it is based on a commission of a new crime.

County jail population management. The bill authorizes sheriffs to actively manage their jail populations in order to keep the population as low as possible while maintaining community safety, including the authority to establish jail admission standards that include offense-based admission standards that limit jail admissions.

State Revenue

Currently, the Judicial Department uses cash bonds to collect outstanding fees and fines due. In FY 2019-20, the department collected \$675,000 by applying cash bonds to court-ordered obligations. As described in the State Expenditures section, the fiscal note identifies the need for additional staff to collect lost fee and fine revenue; therefore, any revenue reduction is expected to be minimal.

State Expenditures

The bill will increase costs for the Judicial Department by \$118,332 and 1.4 FTE in FY 2021-22 (half-year impact) and \$234,646 and 3.2 FTE in FY 2022-23. Costs have been prorated for the bill's effective date and the General Fund pay date shift, as shown in Table 2 and detailed further below.

**Table 2
 Expenditures Under SB 21-062**

Cost Components	FY 2021-22	FY 2022-23
Judicial Department		
Personal Services	\$72,425	\$173,817
Operating Expenses	\$2,160	\$4,320
Capital Outlay Costs	\$18,600	-
Centrally Appropriated Costs ¹	\$25,147	\$56,509
Total	\$118,332	\$234,646
Total FTE	1.4 FTE	3.2 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Judicial Department—trial courts. The bill requires 2.0 FTE clerk staff to perform intake paperwork and compliance checks that had been previously performed by law enforcement and jail staff. FTE amount is based on the assumption that 5 minutes of additional workload will be required for approximately 50,000 cases per year. In addition, the bill requires 0.6 FTE clerk staff to perform fingerprinting for an estimated 37,319 cases at 2 minutes per case.

- *Assumptions.* Caseload used for this estimate uses a two-year average and excludes cases under the Victim's Rights Act; cases involving a crime of violence, including domestic violence; and cases where a cash bond was set post-sentence. Of the remaining cases, the estimate includes 95 percent of felony cases and 50 percent of misdemeanor cases, and removes an extra 10 percent of those cases to account for unique circumstances where arrests may continue to occur. Fingerprinting caseload is further reduced to subtract offenses that do not require fingerprinting.

Judicial Department—collections unit. Due to the reduced use of cash bonds, the Judicial Department requires 0.6 FTE collections staff to facilitate the collection of court-related debt. The fiscal note includes this staff so that the Judicial Department is able to meet its statutory obligation to collect fine and fee revenue.

- *Assumptions.* In FY 2019-20, there were 6,959 cases where cash bonds were used to pay court-ordered obligations. Workload impact assumes 33 percent of these will no longer be assessed a cash bond and that each case averages 30 minutes of collection time.

Judicial Department—hearing increase. Workload and costs may increase in trial courts and the offices of the Public Defender and Alternate Defense Counsel to the extent the bill creates additional hearings. If additional funding is required, it will be addressed through the annual budget process.

Department of Corrections. The bill may result in a reduction of local jail populations, which may increase costs for the Department of Corrections to transport parolees to their facilities and shift department costs from paying counties for jail beds to conducting prison operations. A precise impact cannot be determined, as the actual impact will depend on determinations at the county jail level. If additional funding is required, it will be addressed through the annual budget process.

State agencies employing law enforcement officers. The state agencies that employ law enforcement officers—including the Departments of Corrections, Natural Resources, Public Safety, and Revenue, and institutions of higher education—will have a workload increase to train officers on the new procedures created by the bill. The fiscal note assumes this can be accomplished within each agency's existing appropriations.

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. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$25,147 in FY 2021-22 and \$56,509 in FY 2022-23.

Local Government

This bill is expected to result in an overall cost savings to local governments; however, costs will both increase and decrease as discussed below.

County jails. During the COVID-19 pandemic, sheriffs took measures to reduce county jail populations by modifying arrest standards, evaluating early release, and reducing cash bonds. If similar approaches continue, as encouraged by the bill, this will result in a cost savings in county jails.

District attorney offices, Denver County Court, and municipal courts. Similar to the Judicial Department, the bill's potential to create additional hearings will impact district attorney office workload, as well as revenue and costs in the Denver County Court, which is managed and funded by the City and County of Denver, and municipal courts.

Law enforcement agencies. Local law enforcement agencies may have additional costs to train officers on the new procedures created by the bill.

Effective Date

The bill takes effect January 1, 2022, assuming no referendum petition is filed.

State Appropriations

For FY 2021-22, the bill requires a General Fund appropriation of \$93,185 and 1.4 FTE to the Judicial Department.

State and Local Government Contacts

Alternate Defense Counsel
District Attorneys
Law
Public Defender

Corrections
Information Technology
Local Affairs
Sheriffs

Counties
Judicial
Municipalities