



## Senate Bill-21-006: Jail Population Management Tools

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On March 4, 2021, the Colorado Judiciary Committee held a hearing on SB-21-066, Jail Population Management Tools. While summarized as a bill “concerning measures to reduce jail populations”, its application extends far beyond its title.

The committee hearing lasted over seven hours and elicited testimony from over 50 witnesses, both opponents and proponents of the bill. This bill amends C.R.S. 16-4-113, regarding the issuance of bonds; amends C.R.S. 16-11-206, regarding revocation of probation hearings; adds C.R.S. 30-10-528, concerning the sheriff’s management of the jail population; and repeals C.R.S. 16-5-206 (1.5), regarding the issuance of a summons in lieu of warrant.

The bill has three main components. First, it authorizes peace officers to issue a court summons in lieu of making an arrest and limits the offenses that result in arrest. Next, it prohibits the court from imposing a monetary condition of release unless certain conditions are met; and last it authorizes sheriffs to manage their jail populations by establishing admission standards.

In effort to take advantage of the measures put in place by sheriff departments to decrease in the jail population during Covid, the ACLU reached out to sheriff departments around the state to discuss ways to make lasting changes regarding incarceration prior to conviction, especially for non-violent, low level crimes. This proposed legislation is the product of those conversations. The bill includes a requirement that a police officer issue a summons in lieu of arrest for the commission of a traffic offense; petty offense; municipal offense; misdemeanor offense; class 4, 5 or 6 felony; or a class 3 or 4 felony. There are many exceptions to that requirement, including: if an arrest is statutorily required, the officer cannot sufficiently identify the person, the offense is a victim’s right crime, the offense includes illegal use of a weapon, if protective orders are in place, or the officer has a reasonable suspicion that the person poses a safety threat to the community.

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 their case. In addition, the bill requires the court to issue a personal recognizance bond in a failure to comply with conditions of a probation hearing, unless it is based on the commission of a new crime.

Opponents of the bill, primarily police officers and small retail business owners, are concerned about the increase in crime over the past year and how this bill will embolden criminals to commit more crimes, knowing that they will not be arrested. They stated that the victims of bike thefts, stolen vehicles, shoplifting and other types of misdemeanors would be negatively impacted. Some of the law enforcement officers who testified disputed the numbers provided by proponents of the bill who stated that even with the 46% decrease in jail population, crime in the state had either gone down or stayed the same in most counties. Most officers testified that crimes have sharply risen in many counties throughout the state over the past year.

Proponents of the bill argue that despite a 46% decrease in the jail population during the pandemic, there has not been a significant increase in crime. Data collected from the 14 largest counties in 2019-2020, shows only a 2% increase in crime across the board. No direct correlation exists between a decrease in incarceration and a rise in crime. Three District Attorneys, including Denver D.A., Beth McCann, testified in favor of the bill. All three D.A.'s testified that incarceration and bail disproportionately affect the poor. Proponents believe the bill strikes a balance between the rights of the victims and the people who don't belong in jail. Any safety risks give the police the ability to arrest.

The ACLU attested that many of the people who testified against the bill misread it and that as local police were the ones primarily against the bill, police were just concerned with maintaining the status quo. The bill was closely vetted with the district attorneys throughout the state as well as the department of public safety. Law enforcement was consulted to find out what was working and what was not with respect to arrest and the setting of bond.

Much of the testimony in favor of the bill came from non-profits who work with the homeless, mentally ill and people with substance abuse problems. Incarceration should be reserved for those who most need to be off the streets. Jail is no place for the



mentally ill when they have committed low level crimes, as putting them in jail only makes their behavior escalate. The same thing is true for people with substance abuse issues. Many who are arrested for misdemeanor crimes and can't make bail are forced to detox in jail.

Criminal reform groups testified that bond punishes the poor. There is no correlation between the bond amount and crime. People who post money bonds also commit crimes while out on bond or fail to show up for court. Also, if someone is arrested for a low-level crime and cannot make bond, they stand to lose their job, housing and children, and are forced to sit in jail before even being found guilty of a crime. Many defendants accept an unfair plea deal just to get their case resolved. The defense bar testified that pre-trial detention is punishment before being convicted of a crime. Most people who don't post bond are indigent and lose all stabilizing forces in their lives prior to being found guilty.

The bill also addresses some of the concerns regarding a failure to appear. It allows the court to draft conditions other than monetary bond for pre-trial release and a warrant can be issued against a defendant who does not show up for court when either a victim or a police officer show up to testify against them.

Most sheriff departments in the state are neutral regarding the bill. Significant amendments were made to the bill in order to address the concerns of the law enforcement community. The bill strikes a balance among the various stakeholders. The primary lobbying groups opposing the bill are: The Colorado Fraternal Order of Police, Associated Governments of Northwest Colorado, and Colorado Organization for Victim Assistance. Many lobbying groups are either in support of the bill or are monitoring it. Some of the groups in favor of the bill's passage include: the ACLU, Colorado Criminal Defense Bar, Colorado Criminal Justice Reform Coalition, Colorado Cross-Disability Coalition, Colorado Immigrant Right Coalition, Justice Action Network, Mental Health Colorado.

Beginning with the fiscal year 2021-22, the bill will cause a minimal reduction in state revenue, an increase in state expenditures, and both increases and reductions in local expenditures. It will require an appropriation of \$93,185 to the Judicial Department. Proponents argue that due to the daily incarceration cost of \$98.83 per day, the bill will create a savings of \$170 million per year. Those savings free up monies better used



to address the underline issues causing incarceration in the first place, including mental health problems, homelessness and substance abuse issues.

The LWV is a strong advocate of justice, prison reform and the alleviation of overcrowding in our jails. We support the passing of this bill as it helps prevent some of the injustices occurring under the current laws.

The bill passed out of committee on a party line vote of 3-2 and has been referred to the appropriations committee.