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Which crime suspects should be booked into jail? Which should pay bail? Colorado lawmakers could decide this year.

The bill aims to reduce the populations of Colorado's county jails even after the pandemic





Cyrus McCrimmon, Denver Post file

Jefferson County Sheriff's Deputy Matt Clark walks down the stairs of module 4A in the new jail expansion project at the detention center on Friday, February 8, 2002.

By **ELISE SCHMELZER** | eschmelzer@denverpost.com | The Denver Post
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Should a person suspected of breaking into a cash register be booked into jail? Should they have to pay bond to get out? These are the questions Colorado lawmakers will ponder this session as they debate a bill that would limit whom police can arrest and who has to pay money for release from jail.

The bill, which passed its first legislative hurdle Thursday, would prohibit Colorado law enforcement from taking people into custody on a range of crimes, including misdemeanors and some low-level felonies, and would require judges to issue non-monetary bonds in many of those cases. But the bill includes exceptions for suspects who pose a threat or are repeat offenders.

The goal is to keep Colorado's county jail populations low by embedding in law a more moderate version of the rules used by sheriffs during the COVID-19 pandemic, said Sen. Pete Lee, a Democrat from El Paso County, chair of the Senate Judiciary Committee and one of the prime sponsors of the bill. The Senate Judiciary Committee voted 3-2 in favor of the bill Thursday and it will now be heard in the Senate Appropriations Committee.

The bill will save counties the cost of jailing people and will mitigate the harms of a system where two people accused of the same crime might spend vastly different amounts of time in jail based on how much money they have, he said.

"Jail (before conviction) ought to be reserved for people who are a danger to the community and we have developed a habit of incarcerating people who are not a danger to the community," Lee said.

Sheriffs across the state have limited who they will accept for booking in an attempt to minimize the risk of the coronavirus in their facilities. [Police](#), judges and prosecutors, too, have changed how they do business to lower the jail populations. Over the past year, [Colorado jail populations dropped by more than a third](#), meaning that about 6,000 fewer people were sleeping behind bars on any given night, said Rebecca Wallace of the ACLU of Colorado, which supports the bill.

“There is starting to be a reckoning about mass incarceration and the unfairness of a pretrial system where people without means remain incarcerated while people with money can buy their freedom,” Wallace said.

The bill has split Colorado’s law enforcement leaders and associations. While the Colorado Association of Chiefs of Police opposes the bill, the County Sheriffs of Colorado and the Colorado District Attorneys’ Council have taken neutral stances. During seven hours of committee testimony Thursday, two sheriffs testified against the bill and one testified in support, as did three district attorneys. Representatives from eight different police departments testified in opposition to the bill, with many citing rises in some crimes in their jurisdictions during the pandemic.

The bill comes as the overlapping crises of the pandemic, its devastating financial impact and months of protests of police violence have created a uniquely difficult environment in which to analyze crime trends. It is difficult to know what factors caused different crimes to drop and others to rise in Colorado, experts and law enforcement leaders in the state and across the country have repeatedly said.

“There is nobody that can tell you what is happening right now,” Boulder police Chief Maris Herold said in an interview with The Denver Post, stating that there needs to be more research on potential effects before moving forward with the bill.

If passed, [the bill](#) would prohibit law enforcement from arresting people suspected of traffic, municipal and misdemeanor crimes, as well as a range of lower-level felonies. Instead, police would issue a summons for the person to appear in court at a later date. The felonies included are considered to be classes [four](#), five and six in the state’s criminal code. Those include lower-level burglaries, theft, trespassing, criminal mischief and a range of drug crimes.

But the bill also makes several exceptions, like allowing police to arrest people suspected of crimes that fall under the state’s [Crime Victim Rights Act](#), such as manslaughter, assault, child abuse and vehicular homicide.

The exceptions include if:

- a statute requires an arrest in a specific crime
- law enforcement cannot positively identify the suspect
- the suspect has been convicted of driving under the influence in the past year
- the suspected offense is a felony, a victims' right crime, involves unlawful sexual behavior or illegal use of a gun and: an officer believes the suspect poses a threat to another person, or an officer believes the person won't stop committing crimes unless they are arrested

The arrest standards won't be vastly different than those already used by some law enforcement agencies, said Mesa County Sheriff Matt Lewis, who is president of the County Sheriffs of Colorado.

"In Mesa County, this will be more in line with what we've been doing for quite some time," he said.

Proponents of the bill included mental health professionals, defense attorneys and families of people who died by suicide while in jail on minor offenses.

The vast majority of testimony against the bill focused on fear of increased crime. The police representatives shared anecdotes about suspects saying they knew they wouldn't be arrested and booked into jail, though they did not share specific data directly connecting the increases in crime to jail depopulation. Others opposed said the bill did not take into account the trauma and experiences of victims of property crimes, which can have a significant effect on peoples' lives.

"There's this idea that property crimes aren't that big of a deal and only affect affluent people, but they can have a huge impact," said Sterling Harris, chief deputy director of the Colorado Organization for Victim Assistance, which has taken a neutral stance on the bill.

Data from the 14 largest counties in Colorado analyzed by the ACLU of Colorado show no correlations between changes in reported crime during the pandemic and changes in the jail population. All jurisdictions saw their jail populations decrease between 22% and 52%, but some saw increases in crime and some saw decreases, according to the data.

Research on how arrests affect crime show mixed impacts, said [Kyle Thomas](#), an assistant professor at the University of Colorado Boulder who studies criminal decision making. People are less likely to commit crime if they believe they will face penalties, like conviction and incarceration. But it's less clear how being arrested versus receiving a summons affects criminal behavior.

"Experiencing an arrest does deter some people, but it can actually sort of aggravate criminal behavior for some individuals in the future," Thomas said.

Jailing people pre-trial can make their lives more unstable if lose their jobs, housing and social connections, he said, which could lead to more crimes. It's difficult to know what the long-term impact a bill like this could have on crime, Thomas said.

"It's not impossible that we might see some increases in minor offenses, but that those things could be outweighed by the overall benefits we see from the bill," Thomas said, citing decreases in jail populations and more equity in the legal system.

The bill would also ban judges from requiring a defendant suspected of the above crimes from having to pay money before being released pre-trial "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 proposed change follows [years of legislation and changes to Colorado's bail system](#). About 51% of the 18,623 people incarcerated in the state's county jails in the last quarter of 2020 were people detained before they were convicted, [according to state data](#).

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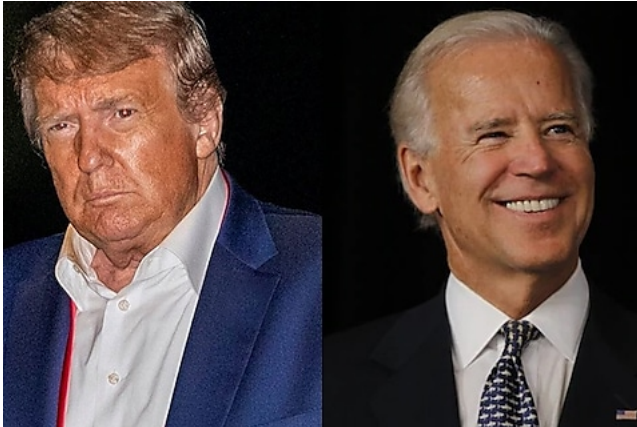
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Elise Schmelzer

Elise Schmelzer is the public safety reporter at The Denver Post and covers police, crime and criminal justice. She previously wrote for the Casper Star-Tribune in Wyoming, the Washington Post and the Colorado Springs Gazette. She studied journalism and Spanish literature at the University of Missouri. When she's not writing, she disappears into the mountains to hike and fish.

eschmelzer@denverpost.com

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