

# SENATE BILL 21-062: Official City Position

Approved by Westminster City Council on March 1, 2021

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(Senator Lee and Rep. Benavidez): Concerning Measures to Reduce Jail Populations

**Official City Position: OPPOSE UNLESS AMENDED**

Status: **Active** - This bill was introduced in the Senate on February 16, 2021. It will have its first committee hearing in the Senate Judiciary Committee on Thursday, March 4, 2021.

Description:

Senate Bill 21-062 proposes to require that after a physical arrest of a person for all non-domestic violence traffic offenses; petty offenses, municipal offenses, misdemeanor offenses, or class 4, 5, and 6 felonies an offender must be immediately released from custody without being taken to jail. There is a limited exception for Victim's Rights Act crimes, but only if certain additional conditions are met. Furthermore, the bill prohibits a court from issuing a monetary condition of bond for said offenses unless the court finds a substantial risk that the defendant will flee prosecution or will threaten the safety of another person. Additionally, it requires the court to issue a personal recognizance bond for a defendant that fails to appear in court unless the person has already failed to appear three times. Courts also must issue a personal recognizance bond for all probation violations unless the alleged violation is a new crime. Lastly, the bill gives sheriffs the authority to "keep the [jail] population as low as possible" by establishing offense-based jail admission standards.

City Comments:

SB 21-062 will place strict limits on a Westminster officer's ability to jail an offender, and on the Westminster Municipal Court's ability to set appropriate conditions of release once an alleged crime has occurred. The bill will further limit the court's ability to set appropriate conditions of release once an alleged probation violation has occurred, and will give county sheriffs near unilateral authority to determine which sentences a defendant will serve and which warrants a defendant will be held on. In the limited circumstances where a court may issue a monetary condition of bond, the court cannot consider Westminster community safety as a factor nor the risk that the defendant will attempt to obstruct or willfully disregard the criminal justice process through failure to appear. The proposed definition of "flee prosecution" is so narrowly defined that it would not apply to the large majority of purposeful failure to appears. As drafted, the bill would have a detrimental impact on the community's safety by allowing a defendant to delay a criminal case for years by continually failing to appear in court while prohibiting any meaningful action from the court. Victims and community members will have no way to know when cases will be heard and when they will be resolved. Alleged criminals may be emboldened and permitted to defy court orders without significant or immediate recourse.

During the course of the pandemic, similar measures such as offense-based admission standards and bond conditions, have been put in place. As a result, the City has seen the impacts first hand, including increases in 2021 in crimes in which offenders are immediately

released after an arrest including: motor vehicle thefts (up 44%), larceny (up 31%), burglary (up 13%) and overall crime (up 5%).

This bill will also have serious ramifications related to domestic violence cases and the City's domestic violence prevention program. As currently drafted in this bill, a domestic violence offender who fails to appear for court must be issued a personal recognizance bond and a sheriff may elect not to accept defendants on domestic violence-related warrants or sentences.

The effects of some of these changes have already been seen. Early in 2020, a defendant was arraigned in Westminster Municipal Court on the charge of violating a domestic violence protection order. The Defendant also had other pending domestic violence and child abuse charges in another jurisdiction. A cash bond was set and the defendant was required to be set up on GPS monitoring. Later, the defendant failed to appear and subsequently deactivated the GPS unit. The Court issued a warrant for the defendant's arrest with a cash/surety bond attached. Several months later, the defendant's bondsman arrested him and attempted to turn him in to a Denver Metro-area County Jail. However, the Sheriff had instituted a policy that municipal warrants for failure to appear would not be accepted due to COVID-19. This is the same kind of restriction SB 21-062 will permit, even in the absence of a global pandemic emergency. Under this "offense-based admission standard," the defendant was released back into the community. Two months later, while still wanted, the defendant was charged with Assault 2nd degree-strangulation; Assault 2nd degree-serious bodily injury; and Assault 3rd degree. Two weeks later, he was charged with Burglary and 1st degree trespass. Only then was the defendant placed back in custody.

Other examples that have occurred; one defendant was arrested for motor vehicle theft, drug related charges, obstruction, resisting arrest, harassment, and had 12 other warrants for his arrest. This defendant did not meet the criteria for jail and was released. Another defendant who bonded out of jail on attempted murder charges was arrested three weeks later for motor vehicle thefts and operating a "chop shop." Even after confessing to the subsequent crimes, he was released. He had also accumulated additional warrants. These examples involve class 4 felonies. Under the provisions of this bill, emergency standards necessitated by a pandemic will now be broadly codified into law.

The City of Westminster's oppose unless amended position specifically seeks the following changes to the legislation:

- Language that maintains an officer's ability to make an arrest on any charge (including crimes not included in the Victim's Right's Act) where there is nonetheless an imminent and substantial threat to a person or the community;
- Removal of language permitting three failure to appear before a court can issue a monetary condition of bond;
- Add language permitting monetary conditions of bond when the defendant poses a risk to community safety and when the defendant is likely to obstruct or willfully disregard the criminal justice process;
- Addition of language permitting monetary conditions of bond in certain circumstances when a probationer has failed to comply with probation or based on previous criminal patterns;

- Language limiting a sheriff's ability to unilaterally determine which sentences or warrants will be enforced; and
- Allow all classes of felony offenses to be eligible for detention in local jails after arrest.

If Westminster's proposed amendments are adopted, we believe the goals will still be reached while balancing individual and community safety concerns. The bill will continue to:

- Prohibit the jailing after arrest of individuals accused of all non-domestic violence municipal offenses, unless the proposed exceptions are met. This would be a substantial change from the current state of the law that does not set such limits.
- Prohibit the jailing after arrest of individuals accused of Victim's Rights Act crimes (below felony levels) unless the proposed exceptions are met. This is a departure from the current state of the law.
- Prohibit a court from setting monetary conditions of bond for failures to appear and probation violations, unless one of the express conditions is met. The City's proposed amendments create much greater restrictions than the current guidelines for setting monetary bond conditions.
- Regarding a sheriff's authority to limit admissions, the other terms of the bill will lower jail populations by preventing transport to jail at the time of officer contact, and by limiting monetary bonds. The intended amendments would prevent "offense based admission standards" that allow for the unilateral release of individuals who: are serving a jail sentence after conviction; are being held pre-trial on felonies, non-felony Victims' Rights Act charges, or charges with an underlying factual basis of domestic violence, when a court found monetary conditions of bond to be appropriate, or; are being held pre-trial for failure to appear after a court found monetary conditions of bond to be appropriate. Sheriffs would retain authority to set admission standards in all other situations, and for non-VRA and non-DV offenses at the municipal and misdemeanor levels.

**Support Official City Position:** Mayor Atchison, Mayor Pro Tem Seitz, and Councillors DeMott, Seymour, Skulley, Smith, and Voelz

**Oppose Official City Position:** None