



**Colorado  
Legislative  
Council  
Staff**

**SB17-010**

**FISCAL NOTE**

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

**Drafting Number:** LLS 17-0603  
**Prime Sponsor(s):** Sen. Kagan

**Date:** January 30, 2017  
**Bill Status:** Senate Judiciary  
**Fiscal Analyst:** Amanda Hayden (303-866-4918)

**BILL TOPIC:** REVISE HABITUAL CRIMINAL STATUTE

<b>Fiscal Impact Summary</b>	<b>FY 2017-2018</b>	<b>FY 2018-2019</b>
<b>State Revenue</b>		
Cash Funds	Potential minimal increase.	
<b>State Expenditures</b>	<b>\$688</b>	<b>(\$101,054)</b>
General Fund	688	(101,054)
<b>TABOR Impact</b>	Potential minimal increase.	
<b>Appropriation Required:</b> (\$2,038,967) - Department of Corrections (FY 2017-18 - FY 2021-22).		
<b>Future Year Impacts:</b> Ongoing decrease in state expenditures.		

**Summary of Legislation**

Under this bill, no offender convicted of a class 4 or 5 felony, unless it is a crime of violence, a class 6 felony, or a level 2 or 3 drug felony can be adjudicated as an habitual criminal.

**Background and Comparable Crime**

Under current law, a person is adjudicated as an habitual criminal and is subject to enhanced sentencing if:

- he or she is convicted of a class 1, 2, 3, 4, or 5 felony or a level 1, 2, or 3 drug felony and has two previous, separate felony convictions within the last ten years; or
- he or she is convicted of any felony and has three previous, separate felony convictions.

For offenders with two previous, separate felony convictions, the penalty for their conviction as an habitual criminal is a sentence to the Department of Corrections (DOC) for a term of three times the maximum of the presumptive range. If the offender's third offense was a level 1 drug felony, the penalty is 48 years in prison. For offenders with three previous, separate felony convictions, the penalty for his or her conviction as an habitual criminal is a prison sentence of four times the maximum of the presumptive range for the class or level of felony, unless the conviction is for a level 1 drug felony, in which case the sentence is 64 years in prison, or a crime of violence, in which case the sentence is life in prison.

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. Over the last three years, there have been 159 offenders sentenced under the habitual criminal statute. Of these, 100 were White, 45 were African American, 9 were Hispanic, 2 were Asian, 2 were classified as other, and 1 was Indian; 157 were male and 2 were female.

### **State Revenue**

Beginning in FY 2017-18, this bill may increase state cash fund revenue by a minimal amount. If offenders are sentenced to probation instead of to the DOC, probation supervision fee revenue will increase by \$50 per offender per month. Fine penalties may also increase as a result of shorter sentences to the DOC. The fiscal note assumes any increase will be minimal.

### **TABOR Impact**

This bill may increase state cash fund revenue from fees, which will increase the amount of money required to be refunded under TABOR for FY 2017-18 and FY 2018-19. TABOR refunds are paid out of the General Fund. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount.

### **State Expenditures**

In FY 2017-18, this bill increases one-time General Fund expenditures in the DOC by \$5,150. Over the five-year period beginning in FY 2017-18, the bill also reduces state General Fund expenditures in the DOC by \$2,044,118 (see Table 5). The bill may affect workload in the Judicial Department. These impacts are discussed below.

**Department of Corrections.** To modify the parameters under which offenders are labeled as habitual, the DOC requires an estimated 50 hours of computer programming to make changes in its time computation system. These programming services will be provided in FY 2017-18 by the Office of Information Technology (OIT) at a rate of \$103 per hour, for a total cost of \$5,150.

**Five-year fiscal impact on correctional facilities and parole.** This bill is anticipated to decrease state General Fund expenditures by an estimated \$2,044,117 beginning in FY 2017-18 for the DOC. This estimate represents the sum of the five-year decrease in expenditures for correctional facilities and the five-year increase in parole expenditures.

Based on data from the last three years, approximately 21 offenders per year are sentenced to the DOC as habitual criminals. Table 1 compares the average length of stay (ALOS) for offenders with habitual status with the ALOS without habitual status for the same offense category. Assuming 21 offenders per year receive shorter sentences and serve less time in the DOC as a result of the bill, expenditures in the DOC will decrease. If any of these offenders receive sentences that do not include prison time at all, expenditures will be even lower than those presented below. The fiscal note assumes those instances will be rare and that any resulting

decrease can be addressed through the annual budget process. For additional information regarding bills that impact correctional facilities and parole, please see: [http://leg.colorado.gov/sites/default/files/images/policies\\_for\\_department\\_of\\_corrections\\_impacts.pdf](http://leg.colorado.gov/sites/default/files/images/policies_for_department_of_corrections_impacts.pdf)

<b>Table 1. Felony Sentencing Data, 2014-2016</b>				
<b>Felony class or level</b>	<b>Current ALOS with habitual status</b>	<b>Proposed ALOS without habitual status</b>	<b>Difference in ALOS</b>	<b>Average habitual offenders sentenced per year</b>
Class 4	188.0 months	38.1 months	(149.9 months)	7 offenders
Class 5	94.5 months	21.6 months	(72.9 months)	8 offenders
Class 6	49.8 months	11.2 months	(38.6 months)	4 offenders
Level 2 drug	245.1 months*	41.5 months	(203.6 months)	1 offender
Level 3 drug	116.8 months*	23.8 months	(93 months)	1 offender

\* Not enough offenders have been sentenced as habitual drug offenders under the new drug felony sentencing scheme to use actual data for these averages. They are approximations using sentencing data from previous habitual criminal statutes.

Table 2 shows the estimated impact to correctional facilities over the next five fiscal years.

<b>Table 2. Five-Year Fiscal Impact On Correctional Facilities under SB17-010</b>				
<b>Fiscal Year</b>	<b>Inmate Bed Impact</b>	<b>Construction Cost</b>	<b>Operating Cost</b>	<b>Total Cost</b>
FY 2017-18	(0.28)	\$0	(\$6,059)	(\$6,059)
FY 2018-19	(5.86)	\$0	(\$128,407)	(\$128,407)
FY 2019-20	(17.86)	\$0	(\$391,207)	(\$391,207)
FY 2020-21	(35.67)	\$0	(\$781,118)	(\$781,118)
FY 2021-22	(51.27)	\$0	(\$1,122,758)	(\$1,122,758)
<b>Total</b>				<b>(\$2,429,549)</b>

Once an offender is released from a correctional facility, he or she is assigned to parole. Table 3 shows the ALOS for offenders on parole by offense category.

<b>Table 3. ALOS on Parole By Offense Category</b>	
<b>Felony class or level</b>	<b>Current ALOS for parole</b>
Class 4	27 months
Class 5	18.1 months
Class 6	9.5 months
Level 2 drug	18.2 months
Level 3 drug	9 months

Table 4 shows the estimated impact on parole over the next five fiscal years.

<b>Table 4. Five-Year Fiscal Impact On Parole under SB17-010</b>			
<b>Fiscal Year</b>	<b>Annualized Parole Impact</b>	<b>Annualized Operating Cost</b>	<b>Total Cost</b>
FY 2017-18	0.28	\$1,597	\$1,597
FY 2018-19	4.74	\$27,353	\$27,353
FY 2019-20	12.74	\$73,518	\$73,518
FY 2020-21	21.02	\$121,285	\$121,285
FY 2021-22	28.02	\$161,679	\$161,679
<b>Total</b>		<b>\$385,431</b>	<b>\$385,431</b>

Table 5 shows the combined five-year fiscal impact on correctional facilities and parole.

<b>Table 5. Summary of Five-Year Fiscal Impact under SB17-010</b>			
<b>Fiscal Year</b>	<b>Annualized Parole Operating Cost</b>	<b>Annualized DOC Operating Cost</b>	<b>Total Cost</b>
FY 2017-18	\$1,597	(\$6,059)	(\$4,462)
FY 2018-19	\$27,353	(\$128,407)	(\$101,054)
FY 2019-20	\$73,518	(\$391,207)	(\$317,689)
FY 2020-21	\$121,285	(\$781,118)	(\$659,833)
FY 2021-22	\$161,679	(\$1,122,758)	(\$961,079)
<b>Total</b>			<b>(\$2,044,117)</b>

**Judicial Department.** This bill may increase workload in the probation division of the Judicial Department if offenders no longer sentenced as habitual criminals receive probation instead of prison sentences. The fiscal note assumes this will be rare. The bill may also increase or decrease the length of criminal trials. Offenders facing an enhanced sentence under the habitual statute may be more inclined to fight the charges against them; as the bill removes this possibility for some offenders, their trials may be shorter. On the other hand, offenders facing very long sentences may be more inclined to reach plea agreements; this bill would remove that incentive and may increase the length of some trials. Overall, the net impact to the Judicial Department is assumed to be minimal and requires no change in appropriations.

**Technical Note**

Subsections 6 and 7 dictate that no conviction for any class 4, 5, or 6 felony or level 2, 3, or 4 drug felony may be used for the purpose of adjudicating someone as an habitual criminal unless it was for a crime of violence; however, the preceding subsections do not modify the law to that effect. The fiscal note assumes that the language in subsections 6 and 7 applies to all previous and current felony convictions, in this state or any other jurisdictions, for the purposes of sentencing an offender as an habitual criminal.

**Effective Date**

The bill takes effect August 9, 2017, if the General Assembly adjourns on May 10, 2017, as scheduled, and no referendum petition is filed.

**State Appropriations**

In FY 2017-18, the bill requires a General Fund appropriation of \$5,150 to the DOC, to be reappropriated to OIT. The bill also requires a five-year decrease in General Fund appropriations to the DOC of \$2,044,117.

**State and Local Government Contacts**

Corrections

District Attorneys

Judicial