



Legislative  
Council Staff

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# FISCAL NOTE

**Drafting Number:** LLS 18-0304  
**Prime Sponsors:** Sen. Kagan

**Date:** February 9, 2018  
**Bill Status:** Senate Judiciary  
**Fiscal Analyst:** Jessika Shipley | 303-866-3528  
Jessika.Shipley@state.co.us

**Bill Topic:** SENTENCES FOR HABITUAL CRIMINALS

**Summary of Fiscal Impact:**

<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill makes changes to the sentencing of habitual offenders. It will minimally increase the workload of the Judicial Department. It also has the potential to decrease admissions and lengths of stay in the Department of Corrections while increasing referrals to community corrections programs administered by the Department of Public Safety.

**Appropriation Summary:** No appropriation is required.

**Fiscal Note Status:** The fiscal note reflects the introduced bill, which was recommended by the Sentencing in the Criminal Justice System Interim Study Committee.

## Summary of Legislation

This bill makes a number of changes with respect to the sentencing of habitual offenders, which are described in detail in the Background section below. First, the bill repeals the provision of law that requires an offender who 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 to be sentenced to the Department of Corrections (DOC) for a term of three times the maximum of the presumptive range (or 48 years for a level 1 drug felony).

Under current law, a court is required to sentence an individual who has three separate, prior felony convictions to four times the maximum of the presumptive range for the most recent felony. The bill amends that requirement so that it only applies to individuals convicted of specified crimes with a sentence of at least one year, both in the prior cases and the most recent case. In these types of cases, the court is required to sentence the individual to the DOC for between two and three times the maximum of the presumptive range for the most recent crime.

The bill makes an exception to the sentencing of habitual offenders when the court finds that the case is exceptional and involves extenuating circumstances. In those cases, the court may sentence an individual to a lesser term, to community corrections, or to probation. The Office of the State Court Administrator is required to compile a report detailing all instances in which lesser sentences are given to habitual offenders.

Finally, the bill allows the habitual offenders addressed by this bill to be eligible for parole after serving 75 percent of their sentence, less earned time.

## **Background**

Under current law, a person is adjudicated as a habitual criminal and is subject to enhanced sentencing if he or she is convicted of:

- a third, separate class 1 or 2 felony, level 1 drug felony, or class 3 felony crime of violence;
- 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
- any felony and has three previous, separate felony convictions.

For offenders who commit a third class 1 or 2 felony, level 1 drug felony, or class 3 felony crime of violence, the penalty for their conviction as a habitual offender is life in prison with the possibility of parole after 40 years. For offenders with two previous, separate felony convictions, the penalty is a sentence to the 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 a habitual criminal is a 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.

## **State Expenditures**

**Judicial Department.** The bill will increase the workload of the trial courts by a minimal amount, which will be accomplished within existing appropriations. Courts will be required to consider evidence and arguments as to why certain individuals should or should not be sentenced as habitual offenders. This will add time to sentencing proceedings. The courts consider approximately 50 such cases each year. The Judicial Department will have a minimal increase in workload from:

- the additional time for sentencing proceedings;
- any new offenders sentenced to probation; and
- the requirement for the Office of the State Court Administrator to compile and make public a report detailing all instances in which lesser sentences are given to habitual offenders.

**Department of Corrections.** This bill has the potential to decrease admissions and the length of stay for some individuals sentenced to the DOC as habitual offenders. In FY 2016-17, the department admitted 31 habitual offenders. The average length of stay for such offenders is approximately 19 years. The department does not collect information on the types of prior offenses that cause an individual to be adjudged a habitual offender. Also, the bill gives more discretion to judges when sentencing habitual offenders and the fiscal note cannot predict how individual judges will choose to use such discretion. As such, it is not possible to determine how many offenders would be affected by the bill and how future sentences will be impacted.

**Department of Public Safety.** The bill has to the potential to increase referrals to community corrections boards for diversion placement in a community corrections program. Because the circumstances under which this might happen, the relatively low number of habitual offenders, and the discretion of the boards to make a placement, the fiscal note is unable to estimate any increase in the community corrections population at this time. To the extent that such placements are made, state expenditures will be reduced. Community corrections programs cost, on average, \$45 per offender per day, as compared to average DOC costs of \$105 per offender per day for a state-operated prison or \$60 per offender per day for a private prison.

### **Local Government Impact**

The bill will increase the amount of time required for sentencing proceedings in cases where a habitual offender designation is at issue. Increased court time leads to increased costs for district attorneys offices.

### **Effective Date**

The bill takes effect July 1, 2018, and applies to offenses committed on or after that date.

### **State and Local Government Contacts**

Alternate Defense Counsel  
Judicial

Corrections  
Public Defender