



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated May 14, 2021)

Drafting Number: LLS 21-0993 **Date:** May 24, 2021
Prime Sponsors: Sen. Gonzales; Gardner **Bill Status:** Senate Appropriations
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Bill Topic: **MISDEMEANOR REFORM**

Summary of Fiscal Impact:

<input checked="" 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 implements misdemeanor and petty offense sentencing reforms recommended by the Sentencing Reform Task Force of the Colorado Commission on Criminal and Juvenile Justice. Beginning in March 2022, the bill will increase state and local expenditures in the short-term, but is expected to reduce crime-related revenue and expenditures in the long-term.

.Appropriation Summary: For FY 2021-22, the bill requires an appropriation of \$95,340 to the Department of Revenue.

Fiscal Note Status: The revised fiscal note reflects the introduced bill, as amended by the Senate Judiciary Committee.

**Table 1
State Fiscal Impacts Under SB 21-271**

		Budget Year FY 2021-22	Out Year FY 2022-23
Revenue		-	-
Expenditures	General Fund	\$35,940	\$378,464
	Cash Funds	\$59,400	-
	Centrally Appropriated	\$8,032	\$111,490
	Total Expenditures	\$103,372	\$489,954
	Total FTE	0.6 FTE	6.4 FTE
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

Under current law, there are three classifications for misdemeanors and two classifications for petty offenses. Effective March 1, 2022, the bill reduces the number of misdemeanor classifications to two classifications, reduces the number of petty offenses to one classification, and creates a new civil infraction classification, which are punishable as follows:

- a class 1 misdemeanor is punishable up to 364 days in jail, a fine of up to \$1,000, or both;
- a class 2 misdemeanor is punishable by up to 120 days in jail, a fine of up to \$750, or both;
- a petty offense is punishable by up to 10 days in jail, a fine of up to \$300, or both; and
- a civil infraction is punishable by a fine of up to \$100.

The bill also updates the alternate sentencing options for misdemeanors and petty offenses, and creates standard time credits for jail sentences. Finally, the bill also reclassifies the offense level for several felony offenses.

Background

The Colorado Commission on Criminal and Juvenile Justice (CCJJ) formed the Sentencing Reform Task Force in response to the Governor's letter of June 24, 2020:

https://cdpsdocs.state.co.us/ccjj/Resources/Leg/Mandates/2020-06-24_GovPolis-2020BiennialLetter.pdf

The letter directed the CCJJ to:

- develop improved guidelines for the disposition of cases;
- ensure statewide consistency and more certainty in sentences;
- ensure incentives for success throughout an offender's sentence and beyond; and
- recognize finite resources for jails and prisons.

The CCJJ performed a practical review and data analysis of what actually happens in criminal cases where a specific offense is charged; eliminated redundant offenses; and created a misdemeanor sentencing grid to accomplish this task.

Comparable Crime Analysis

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 an existing crime. Instead of identifying each individual misdemeanor, petty offense, and select felonies modified by the bill, the following sections outline conviction and demographic information on all misdemeanor-level and petty offense-level offenses.

Overall misdemeanor offenses. From FY 2017-18 to FY 2019-20, 113,300 individuals were convicted of a misdemeanor offense, which is about 38,000 individuals per year. Demographic information for these individuals is shown in Table 2.

Table 2¹
Misdemeanor Sentencing Demographic Data
FY 2018 to FY 2020

Race	Percent	Total
White	82%	92,625
Black/African-American	7%	8,163
Hispanic	6%	6,968
Asian	1%	726
American Indian	1%	1,139
Other	3%	3,056
Unknown	1%	623
Gender		
Male	73%	83,151
Female	26%	29,899
Unknown	0%	250
Total	Total	113,300

¹ Totals may not sum due to rounding.

Overall petty offenses. From FY 2017-18 to FY 2019-20, 25,530 individuals have been convicted of a petty offense, which is about 8,500 individuals per year. Demographic information for these individuals is shown in Table 3.

Table 3¹
Petty Offense Sentencing Demographic Data
FY 2018 to FY 2020

Race	Percent	Total
White	82%	20,882
Black/African-American	5%	1,367
Hispanic	5%	1,393
Asian	1%	134
American Indian	1%	129
Other	5%	1,332
Unknown	1%	293
Gender		
Male	69%	17,588
Female	31%	7,805
Unknown	1%	137
Total	Total	25,530

¹ Totals may not sum due to rounding.

For additional information on the current penalties for crimes included in the bill, see Legislative Council Staff's Crime Classification Guide: <https://leg.colorado.gov/publications/crime-classification-guide-2020>. Additional data on number of convictions and related demographics for specific offenses are available upon request.

State Revenue

The bill is expected to result in an indeterminate net reduction in state revenue to the General Fund and various cash funds, as discussed below.

Judicial Department. Over the past three fiscal years, an average of 1,058 felony cases and 5,895 misdemeanor cases per year have been assessed a fine. The average amount of a felony fine was \$634 and misdemeanor fine was \$194. Net receipts from these assessments average \$365,740 per year for felony fines and \$891,845 per year in misdemeanor fines. While the bill makes many changes to offense levels and fine amounts, offenders will still be sentenced by the court and ordered to pay a financial assessment. As a result, any impact to Judicial Department collections is assumed to be minimal.

Department of Natural Resources. Colorado Parks and Wildlife (CPW) collected roughly \$400,000 in revenue in FY 2019-20 for all parks and wildlife-related penalties. As state law prevents the agency from issuing a penalty assessment when the fine is expressed in a range, where the bill has created a fine range, the CPW will have to issue a summons and complaint instead of issuing penalty assessments that can be paid without a court process. This is expected to result in a reduction of fine revenue for the agency.

Department of Revenue. The Department of Revenue (DOR) has collected, on average, about \$14.0 million per year in penalty assessments for traffic offenses, of which it retains the first \$0.50 collected or an average of \$49,000 per year. The bill's changes to traffic offenses are estimated to both increase and decrease revenue by an indeterminate amount as a result of an increase in penalty assessments without a court process, and lower overall fines for traffic offenses.

State Expenditures

Beginning in FY 2021-22, the bill will increase state cash fund expenditures in the Department of Revenue and, beginning in FY 2022-23, the bill will increase state General Fund revenue in the Judicial Department. Costs are shown in Table 4 and discussed below. The bill will also have an indeterminate impact on the Department of Corrections, and increase workload in the Departments of Natural Resources and Public Safety. FY 2021-22 expenditures are prorated for the bill's March effective date and General Fund expenditures are prorated for the pay date shift.

**Table 4
 Expenditures Under SB 21-271**

Cost Components	FY 2021-22	FY 2022-23
Judicial Department		
Personal Services	-	\$279,443
Operating Expenses	-	\$6,075
Capital Outlay Costs	-	-
Centrally Appropriated Costs ¹	-	\$80,361
FTE – Personal Services	-	4.1 FTE
Judicial Subtotal	-	\$365,879

**Table 4
 Expenditures Under SB 21-271 (Cont.)**

Cost Components	FY 2021-22	FY 2022-23
Department of Revenue		
Personal Services	\$22,460	\$89,841
Operating Expenses	\$1,080	\$3,105
Capital Outlay Costs	\$12,400	-
Computer Programming	\$59,400	-
Centrally Appropriated Costs ¹	\$8,032	\$31,129
FTE – Personal Services	0.6 FTE	2.3 FTE
DOR Subtotal	\$103,372	\$124,075
Total	\$103,372	\$489,954
Total FTE	0.6 FTE	6.4 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Judicial Department. The Judicial Department's impacts are discussed below:

- *Probation.* The bill makes a probation sentence an option for certain offenses and for all class 2 petty offenses. The fiscal note uses a three-year average of relevant cases, not including sentences with additional charges that resulted in a probation sentence. These data indicate that 184 cases will require adult supervision, 16 cases will require juvenile supervision, and 155 cases will require Victim's Rights Act notifications. This is estimated to increase workload in the Probation Division by about 6,800 hours, or 4.5 FTE, including 3.3 FTE probation officer, 0.5 FTE probation supervisor, and 0.7 FTE support staff. As shown in Table 2, these impacts are expected to first occur in FY 2022-23 and have been prorated for the General Fund pay date shift.
- *Fingerprinting.* The bill will create new fingerprint orders to be fulfilled by court staff; however, this workload can be accomplished within existing appropriations.
- *Diverted Cases from District to County Court.* Certain cases are expected to move from district to county court under the bill. This is expected to result in a workload reduction of 0.3 FTE Judicial Officer and support staff. This savings are offset by additional staff time to ensure the bill's over 120,000 impacted charges are entered correctly post-implementation, as well as the potential trial court workload increase resulting from the bill's new felony charges. As a result, this workload shift requires no change in appropriations.
- *Information technology.* The bill's reclassification of crimes will require updates to the Department's case management system; however, it is expected that these changes can be accomplished within existing resources. This also assumes that sheriffs will provide notice to the Chief Judge about good time credit for a jail sentence on paper, and no data transfer is required.

- *Other judicial agencies.* The bill may result in court-related cost savings for judicial agencies, such as the Office of the Child's Representative, the Office of the State Public Defender, and the Office of the Alternative Defense Counsel. No change in appropriations is required in the current budget year and future year adjustments will be addressed through the annual budget process, as necessary.

Department of Revenue. The bill reclassifies approximately 23 offenses from various misdemeanors and petty offenses to Class A traffic infractions. Assuming approximately 35,000 manual entries for these violations, at 8 minutes per entry, the DOR requires 2.3 FTE Administrative Assistant II, as well as one-time DRIVES programming at an estimated 264 hours at \$225 per hour. First-year costs are prorated for the bill's effective date and personal services costs are prorated for the General Fund pay date shift.

Department of Corrections prison and parole costs (five-year fiscal impact). There are 47 penalties that are changed in the bill and may have a fiscal impact on the DOC. Of these: 17 penalties are expected to have a minimal impact based on recent sentencing history; 28 theft-related penalties are indeterminate, since there is no sentencing history available accounting for the monetary value of past sentences, but expected to result in a decrease of sentences to DOC; and the remaining 2 sentences—third-degree burglary and possession of weapons by previous offenders—create a measurable impact, which is expected to be offset by future cost savings resulting from the indeterminate felony reductions. Because no prison operating impacts will occur in the first year due to the amount of time required for criminal filing, trial, disposition and sentencing of each case, and second-year impacts will not occur until three-quarters into the fiscal year, the fiscal note assumes that any out-year impacts will be addressed through the prison population forecast and the annual budget process.

Department of Natural Resources. The bill requires CPW to make changes to the law enforcement records management system to update fine amounts, and update law enforcement training and regulations. When CPW enforcement officers write court summons in lieu of assessing penalties, they will be required to attend and testify at the hearing. Finally, penalty revenue is credited to the division's cash funds and used to fund all division costs; therefore, if a substantial decrease in penalty revenue occurs under the bill and obligations exceed revenue, this would require the reprioritization of programs. No change in appropriations is required under the bill and potential impacts will be addressed through the annual budget process.

Department of Public Safety. Overall, the bill is expected to reduce workload for the Colorado State Patrol, as the ability to pay traffic violations by mail will reduce the number of court appearances for troopers. In FY 2021-22, workload will increase to provide training on the bill's provisions. No change in appropriations is required.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 4.

Local Government

The bill affects local criminal justice system revenue and costs in various ways, as described below. Overall, the bill is expected to result in short-term expenditures and long-term cost savings. Revenue impacts vary.

Sheriffs and county jails. The bill will impact costs to county jails in two ways. To the extent that individuals who would have been sentenced to the Department of Corrections are sentenced to county jail, costs to counties will increase to house more inmates. Conversely, if the bill's reduction in jail sentences and new penalty assessments in lieu of jail time result in less time served in county jails, costs to counties will decrease.

Denver County Court. Costs and workload will increase for Denver County Courts to revise each affected violation modified by the bill for every iteration of the violation in the court's database; to provide training for all judges and magistrates on the sentencing changes and bonding requirements in the bill; and to identify which of the bill's changes will necessitate harmonization in the city's ordinances. This workload is expected to drive about \$200,000 in one-time costs in FY 2021-22. The bill may decrease fee and fine revenue to the courts, though similar to the state, this reduction is expected to be minimal. The Denver County Court is funded by the City and County of Denver.

Municipal courts. Large municipal courts will have similar cost increases and minimal revenue reductions as the Denver County Court.

Municipalities. Municipalities will have an increase in workload to harmonize city ordinances with the bill's provisions.

District attorneys. Initially, the Colorado District Attorney's Council will have increased workload and potential contractor costs to update all charge codes in the central database and provide training to district attorney's offices and law enforcement agencies throughout the state. In the long-term, the bill's reclassification of numerous offenses into civil infractions and its reduction in misdemeanor levels is expected to decrease district attorney workload.

Effective Date

The bill takes effect March 1, 2022.

State Appropriations

For FY 2021-22, the bill requires an appropriation of \$95,340 and 0.6 FTE to the Department of Revenue, of which \$35,940 is General Fund and \$59,400 is from the Licensing Services Cash Fund.

State and Local Government Contacts

Child Welfare
County Clerks
Human Services
Law
Public Defender
Revenue

Corrections
District Attorneys
Information Technology
Municipalities
Public Safety
Sheriffs

Counties
Governor
Judicial
Natural Resources
Regulatory Agencies
Special Districts