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Memorandum

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TO: Interested Persons

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SUBJECT: Fiscal Analysis of Bills with Criminal Justice System Impacts

Summary

This memorandum provides information regarding the considerations and potential fiscal impacts that may be found in the fiscal analysis of bills proposed during the 2020 legislative session that contain a criminal offense and have a criminal justice system impact. More specifically, this memorandum provides an overview of Colorado crime classifications and sentencing ranges and describes potential state and local government criminal justice system fiscal impacts.

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Crime Classifications and Sentencing

Under Colorado law, criminal offenses (crimes) are classified by type, including felonies, misdemeanors, drug offenses, petty offenses, traffic offenses, and traffic infractions. The seriousness of a particular crime determines the classification and the potential sentence that may be imposed on an offender convicted of that crime. The following section describes the various crime classifications used in Colorado law, the sentencing ranges for crimes in these categories, and provides fiscal analysis considerations and limitations.

Felonies

There are 6 felony classifications ranging from the most serious felonies, class 1, to the least serious felonies, class 6. Additionally, some felony crimes are unclassified. State law specifies the sentencing and fine penalty range for these crimes. With some exceptions, offenders convicted of a felony may be sentenced to a term of imprisonment in the Department of Corrections (DOC) and required to pay a fine as shown in Table 1. After release from prison, persons convicted of a felony serve a mandatory period of parole.

Table 1
Felony Sentence and Fine Penalty Ranges

Felony Class	Minimum Prison Sentence	Maximum Prison Sentence	Mandatory Parole	Fine Penalty Range
Class 1	Life in Prison	Death		
Class 2	8 years	24 years	3 or 5 years*	\$5,000 to \$1,000,000
Class 3	4 years	12 years	5 years	\$3,000 to \$750,000
Class 4	2 years	6 years	3 years	\$2,000 to \$500,000
Class 5	1 year	3 years	2 years	\$1,000 to \$100,000
Class 6	1 year	18 months	1 year	\$1,000 to \$100,000

Source: Section 18-1.3-401, C.R.S

*Class 2 mandatory parole is three years if crime was non-violent and five years if crime was violent.

Extraordinary risk crimes. Certain crimes such as aggravated robbery, child abuse, stalking, and human trafficking are considered in state law to be crimes that present an extraordinary risk to society. The maximum sentence for extraordinary risk crimes is increased as follows:

- by 4 years for class 3 extraordinary risk felonies (16 years maximum)
- by 2 years for class 4 extraordinary risk felonies (8 years maximum)
- by 1 year for class 5 extraordinary risk felonies (4 years maximum); and
- by 6 months for class 6 extraordinary risk felonies (2 years maximum).¹

Crimes of violence. Under state law, certain crimes such as murder, first or second degree assault, kidnapping, and aggravated burglary are considered crimes of violence. The sentence for an offender convicted of a crime of violence is increased to at least the midpoint of the range for an extraordinary risk felony minimum sentence and no more than twice the maximum of the range.² For example, the minimum sentence for a class 3 felony crime of violence is increased to 10 years with a maximum sentence of 32 years. The fine penalty is the same for crime of violence felonies.

Alternative sentences. Not all persons convicted of a felony will receive a sentence of incarceration in the DOC because state law authorizes alternative sentencing, such as deferred prosecution, deferred sentencing, probation, or community corrections. In addition, state law allows a felony offender to be sentenced to 90 days in county jail as a condition of probation.³ Prison sentences are more likely to be imposed for serious felony convictions, generally class 1 through 4 felonies. The use of alternatives sentences are at the discretion of the court and can vary due to the type of crime, circumstances of the

¹Section 18-1.3-401 (10), C.R.S.

²Section 18-1.3-401 (13), C.R.S.

³Section 18-1.3-202 (1)(a), C.R.S.

crime, and criminal history of the offender. Alternative sentences are more likely, but not always, imposed for less serious felony convictions, generally class 5 and 6 felonies. Sentencing decisions are made by the trial court judge. Local law enforcement and the Colorado Attorney General may also have input into such a decision.

Considerations for felony offenses. For bills with felony offenses, including drug felonies, potential DOC impacts are determined by analyzing comparable crime sentencing data obtained from the Judicial Department. The DOC impacts are then calculated if the data shows that a DOC sentence is likely to occur for that particular crime. The DOC impacts are estimated using average length of stay in prison and parole data obtained from the Department of Public Safety, Division of Criminal Justice, multiplied by the DOC daily operation and parole costs. To the extent that alternative sentences are used instead of incarceration in the DOC, estimated fiscal impacts to house a felony offender will decrease. However, because of judicial discretion, the use of alternative sentencing cannot be estimated in most cases.

Misdemeanors

There are three misdemeanor classifications ranging from the most serious, class 1, to the least serious, class 3. Additionally, some misdemeanor crimes do not have a classification and are considered unclassified crimes. Offenders convicted of a misdemeanor may be sentenced to a term of imprisonment in county jail and/or may be required to pay a fine as shown in Table 2. Similar to felonies, sentencing decisions are subject to the discretion of the trial court judge with input from the district attorney, local law enforcement, and the Attorney General, and alternative sentences may be utilized. The use of alternative sentences is more likely for misdemeanor offenders.

Table 2
Misdemeanor Sentence and Fine Range

Misdemeanor Class	Minimum Misdemeanor Sentence	Maximum Misdemeanor Sentence
Class 1	6 months, \$500, or both	18 months, \$5,000, or both
Class 2	3 months, \$250, or both	364 days, \$1,000, or both
Class 3	\$50	6 months, \$750, or both

Source: Section 18-1.3-501, C.R.S

Extraordinary risk crimes. Similar to felonies, certain misdemeanor crimes such as third degree assault, sexual assault, child abuse, and failure to register as a sex offender are considered in state law to be extraordinary risk misdemeanors. Extraordinary risk misdemeanor crimes are class 1 misdemeanors and the maximum sentenced is increased by 6 months.⁴

Drug Offenses

Drug offenses are also classified by level and may be a felony or misdemeanor. Drug felonies are classified as levels 1 through 4, with a level 1 drug felony being the most serious. Drug misdemeanors are either a level 1 or level 2 misdemeanor, with a level 1 drug misdemeanor being the most serious.

⁴Section 18-1.3-501 (3)(a), C.R.S.

Offenders convicted of a felony drug offense may receive a sentence to the DOC and assessed a fine, as shown in Table 3. Offenders convicted of a misdemeanor drug offense may be sentenced to pay a fine and/or to a term of incarceration in county jail as shown in Table 4. Similar to other felony offenses, the fiscal impact of bills with felony drug offenses is estimated using average length of stay data multiplied by daily DOC operating and parole costs.

**Table 3
Drug Felony Sentence and Fine Penalty Range**

Drug Felony Level	Minimum Prison Sentence	Maximum Prison Sentence	Mandatory Parole	Fine Penalty Range
Level 1	8 years	32 years	3 years	\$5,000 to \$1 million
Level 2	4 years	8 years	2 years	\$3,000 to \$750,000
Level 3	2 years	4 years	1 year	\$2,000 to \$500,000
Level 4	6 months	1 years	1 year	\$1,000 to \$100,000

Source: Section 18-1.3-401.5, C.R.S

**Table 4
Drug Misdemeanor Sentence and Fine Penalty Range**

Drug Misdemeanor Level	Minimum Sentence	Maximum Sentence
Level 1	6 months, \$500, or both	18 months, \$5,000, or both
Level 2	\$50	364 days, \$750, or both

Source: Section 18-1.3-501, C.R.S

Petty Offenses

Petty offenses are crimes that are considered to be less serious than a felony or a misdemeanor. There are two classifications of petty offenses in state law, with class 1 petty offenses being the most serious and class 2 petty offenses being the least serious. Offenders convicted of a class 1 petty offense may be sentenced to up to 6 months in county jail, probation, and/or a fine of up to \$500.⁵ Offenders convicted of a class 2 petty offense are most likely to be fined, but may be sentenced to county jail in limited circumstances. The sentence for class 2 petty offenses is specified in statute for each class 2 petty offense. In addition, some petty offenses are unclassified, and penalties for such crimes are specified in statute for each unclassified petty offense.

Traffic Offenses

State law classifies traffic offenses as either a misdemeanor traffic offense or a traffic infraction. There are two misdemeanor traffic offense classifications, class 1 and class 2, with a class 1 traffic misdemeanor being the most serious. There are also unclassified misdemeanor traffic offenses. Sentencing and fine ranges for traffic offenses can be found in Table 5. Offenders may also be required to perform a certain number of hours of community or useful public service.

⁵Section 18-1.3-506, C.R.S.

Table 5
Traffic Misdemeanor Sentence and Fine Penalty Range

Traffic Misdemeanor Class	Minimum Jail Sentence	Maximum Jail Sentence	Fine Penalty Range
Class 1	10 days	1 year	\$300 to \$1,000
Class 2	10 days	90 days	\$150 to \$300

Source: Section 42-4-1701, C.R.S

Serious crimes involving a vehicle may be classified as a felony instead of as a traffic offense using the felony classifications found in Table 1. For example, vehicular homicide is classified in state law as either a class 3 or 4 felony depending on the circumstances of the crime.

Traffic infractions

Traffic infractions are more minor in nature and are classified as class A, class B, or unclassified infractions, with class A infractions being the most serious. Traffic infractions have a penalty range from \$15 to \$100, unless otherwise provided in statute.⁶ Any penalty collected from a class A or class B traffic infraction is credited to the Highway Users Tax Fund (HUTF), with 65 percent going to the Department of Transportation, 26 percent to counties, and 9 percent to municipalities. Each offender must also pay a surcharge amount as specified in statute. If there is no surcharge specified for an offense, the surcharge is \$4. Additionally, the Department of Revenue can assess points to a driver license, which could lead to the suspension or revocation of the license. Points cannot be assessed to a driver license for any class B traffic infractions.

Fiscal analysis considerations for misdemeanor, class 1 petty offenses, and traffic offenses.

Because offenders convicted of a misdemeanor, drug misdemeanor, or petty offense may be fined, sentenced to jail, or both, and such decisions are subject to judicial discretion, the exact local government revenue and expenditure fiscal impact of bills addressing such crimes cannot be determined. However, the fiscal note typically provides an estimated range of impact based on comparable crime assumptions. Additionally, alternative sentences may be imposed for misdemeanor and petty offenses. To the extent that alternative sentences are utilized, misdemeanor impacts will be reduced.

Criminal Justice Impacts by State or Local Government Agency

The following section provides information on and explains the types of potential criminal justice impacts that may be found in the fiscal analysis of bills with criminal offenses. State department and local government impacts may vary depending on the circumstances of the crime and prior criminal history of the offender; they may further vary depending on the exact nature of the legislation being considered. Fiscal notes for bills with criminal justice impacts will estimate all such impacts based on the language of the bill and an analysis of comparable crime data.

⁶Section 42-4-1701, C.R.S.

Judicial Department

There are various potential fiscal impacts to the Judicial Department that are considered and may be identified in the fiscal analysis of bills that have a criminal offense. This includes fine and fee revenue, trial court-related expenditures, probation supervision costs, and indigent defense. These potential impacts are described in more detail below.

Revenue. The Judicial Department collects criminal fine and administrative fee revenue from felony, misdemeanor, drug, and petty offense convictions. All such revenue is subject to TABOR.

- *Criminal fines.* Offenders sentenced for felony, misdemeanor, drug, and petty offense crimes may be required to pay a criminal fine penalty imposed by the court. Criminal fine revenue is deposited into the Fines Collection Cash Fund, and the amount of the fine penalty is at the discretion of the judge with input from the district attorney, and potentially local law enforcement and the Attorney General. While fine penalties can range from as little as \$50 up to \$1 million, actual fines imposed are based on an offender's ability to pay. The total amount of revenue collected for any given classification of crime is generally less than \$5,000. As a result, for fiscal note purposes, most criminal fines are considered as having a minimal revenue impact, regardless of the classification of the criminal offense resulting from the legislation.
- *Court and administrative fees.* Court and administrative fees may be imposed for a variety of court-related costs, including drug or sex offender surcharges, victim compensation, restitution, supervision costs, and late fees. Revenue collected from court and administrative fees is deposited into the state General Fund, various cash funds, and also shared with the local government in which the crime was committed. Such fees vary based on the circumstances of the crime and may be mandatory or subject to the discretion of the judge. Given this, the exact revenue impacts from court and administrative fees cannot be predicted in fiscal analysis of bills containing criminal offenses, but are assumed to be minimal based on historical amounts of court fees imposed for similar crimes.
- *Probation fees.* Offenders on probation must pay a probation supervision fee of \$50 per month, which for most bills is considered to be a minimal revenue impact. Offenders sentenced to probation are not released from probation until all court-ordered costs have been paid, and an offender may be placed on unsupervised probation after his or her initial supervised probation period has been served if he or she is still paying court costs.

Trial courts. The trial courts in the Judicial Department hear criminal cases either in a district or county court trial court. District trial courts hear felony criminal cases, while county courts hear misdemeanor and petty offense cases. With the exception of Denver County Court, which has separate constitutional authority and is administered by the City and County of Denver, all county courts are part of the state court system and are administered by the Judicial Department; therefore, county court caseload and fiscal impacts are state Judicial Department impacts.

Caseload/FTE standards. The Judicial Department conducts periodic caseload studies to determine the number of cases various judges are able to handle per year. The fiscal note uses these caseloads and the anticipated number of court filings under a bill to determine appropriate staffing levels. According to the Judicial Department caseload standards, a district court judge can handle between

473 and 511 felony criminal cases per year, while a county court judge can handle between 2,136 and 2,708 misdemeanor criminal cases per year. Because of the ability of the court to manage its criminal docket and the costs associated with adding new judicial officers, fiscal notes generally use a 0.5 FTE threshold for adding new judicial FTE, unless special circumstances exist. Therefore, an appropriation to the Judicial Department will be required for bills with a felony caseload impact greater than 237 cases or a misdemeanor caseload impact of greater than 1,068. Workload for bills with an FTE impact of less than 0.5 FTE can be accomplished within existing appropriations.

Judicial support staff. Support staff is included for any new judge FTE. These staff include a judicial assistant, law clerk, and court reporter for each district court judge, and a judicial assistant and assistant clerk for each county court judge. Therefore, an additional 3.0 FTE are required for each additional 1.0 FTE district court judge, and an additional 2.0 FTE are required for each additional 1.0 FTE county court judge. Because additional judges must be added in separate legislation, additional judicial officers are generally hired as magistrates.

Operating and capital outlay costs. Adding judicial FTE results in standard operating costs of \$1,350 and capital outlay costs of \$6,200 per new FTE. In addition, adding judge FTE results in costs for law library materials, travel, and facility costs for courtroom buildout and furnishings, which are \$91,619 for a judge and \$81,279 for a magistrate.

Probation division. Offenders convicted of misdemeanor and petty offenses, as well as felony offenders in limited circumstances, may be sentenced to probation. The Division of Probation in the Judicial Department supervises these offenders. State law does not require specific periods or types of probation, and offenders sentenced may be subject to intensive supervision, regular supervision, or unsupervised supervision. For regular probation, each new regular probation case results in a workload increase of 3.86 hours, per month or 46.32 hours per year. The average monthly hours of probation supervision required are determined by the courts and can vary by case, with supervision ranging from less than 0.5 hours per month for offenders that the courts have been deemed to need little supervision to over 15 hours per month for offenders needing significant supervision. For the current year, FY 2019-20, the average cost for regular probation supervision is \$1,379 per year per adult and \$2,330 per year per juvenile. The cost for intensive probation supervision is \$3,883 per adult per year and \$3,462 per juvenile per year. Because it is not known if future offenders will be sentenced to probation and whether regular or intensive supervision will be required, it is generally assumed that additional appropriations for probation supervision, if needed, will be addressed through the annual budget process for bills with a probation workload impact.

Indigent defense. Offenders who cannot afford representation in a criminal case will be appointed a lawyer from either the Office of the State Public Defender (OSPD) or the Office of Alternative Defense Counsel (OADC). Both agencies are housed in the Judicial Department, but operate independently. Costs for both agencies are driven by the number and types of cases with indigent offenders. The OSPD spends an average of \$336 for a misdemeanor case and \$833 for a felony case, while the OADC had an average cost of \$1,474. OSPD hires and uses in-house attorneys for indigent defense, while the OADC contracts with private attorneys to represent indigent defendants and only takes a case if the OSPD has a conflict of interest. OADC contract attorneys are paid \$80 to \$95 per hour for felony cases, and \$75 per hour for misdemeanor and traffic cases. For most bills with a criminal offense, because it

is not known when indigent defense will be required and whether or not a conflict of interest will exist, it is assumed that any increase in appropriations for either agency will be addressed through the annual budget process based on actual changes in caseload.

Department of Corrections

There are various potential fiscal impacts to the DOC that may be identified in the fiscal analysis of bills that have a felony impacts. This includes prison operating, capital construction, and parole costs, and county jail reimbursements impacts. Current law allows the DOC to place certain offenders in private contract prisons, for which no state capital construction costs are incurred. Offenders not placed in a private prison are placed in a state-run prison. Offenders convicted of more serious offenses, typically class 1 and 2 felonies, are most likely to be placed in a state-run prison. More information on these impacts can be found below.

Legally required analysis. An offender convicted of a felony offense and sentenced to the DOC will occupy a prison bed. State law requires the General Assembly to consider the need to appropriate funds to cover increased operating, capital construction, and parole costs for five fiscal years when legislation is estimated to increase periods of imprisonment in state correctional facilities (prisons).⁷

Operating costs. Offenders placed in a private contract prison cost the state on average \$64.67 per offender, per day, or \$23,604 for a full year. This includes the per offender daily facility contract rate of \$57.37, the administrative cost rate of \$4.21, and the \$3.09 medical care rate. Offenders placed in a state-run prison cost an average of \$116.89 per day or \$42,665 for a full year. In FY 2020-21, DOC's operating costs in fiscal notes for bills with felony offenses will be calculated using the daily DOC prison operating cost (\$116.89) multiplied by the average length of stay expected for the crime. This daily bed rate may be adjusted to account for unique factors in a specific bill or in an affected prison facility or offender population. For offenses committed on or after the effective date of a bill, no impact is shown in the first year because of the estimated time for criminal acts to occur, filing of charges, trial, disposition, and sentencing. If any first year impacts are incurred, it is assumed that any changes in appropriations required will be addressed through the annual budget process.

Capital construction costs. Fiscal notes will show the estimated capital construction costs for each additional prison bed calculated at \$178,471 per bed. This amount may be appropriated at the discretion of the General Assembly. This estimate is based on DOC facility construction costs divided by the number of prison beds in the facility. Because capital construction projects are overseen by the Capital Development Committee, these funds must first be transferred from the General Fund to the Capital Construction Cash Fund and are then appropriated to the Corrections Expansion Reserve Fund. Such funds may be used by the DOC for prison construction, expansion, or renovation projects that are approved by the General Assembly.

Parole. Offenders convicted of a felony and sentenced to the DOC will serve a term of parole upon completion of their prison sentence. The cost per day for supervising an offender on parole is \$16.06, which amounts to \$5,862 per year. Parole impacts in fiscal notes with DOC impacts are determined

⁷Section 2-2-703, C.R.S.

by taking the parole cost per day multiplied by the average parole length of stay for the particular crime as determined and published annually by the Division of Criminal Justice.

County jail reimbursement. The DOC is required to reimburse county jails for holding state prisoners in county jail. State prisoners may be held in county jail post-conviction while awaiting transport to a DOC facility, at the request of a judge before appearing in court, or on a long-term basis under certain contractual agreements. State offenders may also be held in county jail for a parole violation either as punishment or while awaiting a parole revocation hearing or hearing for a new crime. The current county jail reimbursement rate is \$58.56.

Department of Public Safety—Community Corrections

Community corrections programs are state-funded and locally administered programs that place offenders in a community housing setting, commonly known as halfway houses. Offenders may be sentenced by the courts directly to a community corrections program or placed in a community corrections program on the recommendation of the executive director of the DOC or the Parole Board. Offenders placed in community corrections are typically felony offenders and generally have been convicted of a less serious felony, generally a class 4, 5, or 6 felony. Offenders may be located in a residential placement, where the offender lives at the community corrections facility, or a nonresidential placement, where the offender lives outside of a facility and checks in with case workers. The state establishes a per diem rate to contract with local community corrections boards to provide a specific number of beds at the established rate. Table 6 shows the state per diem rate in FY 2019-20 for each placement type.

**Table 6
Total State Per Diem by Bed Placement**

Placement Type	Total Per Diem
Residential	\$48.45
Intensive Residential Treatment	\$93.47
Residential Dual Diagnosis Treatment	\$82.64
Sex Offenders	\$82.64
Inpatient Therapeutic Communities	\$75.76
Cognitive Behavioral Treatment Pilot	\$95.02
Nonresidential	\$6.56
Outpatient Therapeutic Communities	\$23.52

Source: 2019 Long Appropriations Bill.

Offenders may be charged up to \$17 per day for residential placement and up to \$3 per day for nonresidential placements by the community corrections program. Community correction boards and programs have the power to accept or deny the placement of any offender sentenced to or recommended to a community corrections program. As a result, it is unknown how many offenders will be placed in community corrections instead of serving time in the DOC, parole, prison, or probation, and such fiscal impacts cannot be estimated. To the extent that an offender is sentenced to community corrections instead of the DOC, state expenditures associated with the incarceration of the

offender will decrease because community corrections per day operating costs are less than that of the DOC, and the length of stay in community corrections is also shorter.

County Jail

County jails are run by a county sheriff and house offenders awaiting trial (pre-trial detention), misdemeanor and petty offenders sentenced to jail, and offenders who commit a parole violation. Based on a recent study conducted by Joint Budget Committee Staff, the cost to house an offender in a county jail varies from \$43.65 to \$350.21 per day. Under current law, the state reimburses county jails for housing state inmates at a rate set by the Joint Budget Committee. For the current fiscal year, FY 2020-21, the state reimburses county jails at a daily rate of \$58.56, generally after the first 72 hours of incarceration. Because jail costs vary by county, it is unknown where future offenses will occur, and the courts have discretion in sentencing an offender to incarceration or imposing a fine, the exact impact of housing an offender in county jail cannot be determined in the fiscal analysis of bills that have a misdemeanor or petty offense with a possible jail sentence.

City and County of Denver

According to state law, Denver County Court is funded and administered by the City and County of Denver. Misdemeanor and petty offense cases for offenders arrested in Denver are held in Denver County Court rather than a state-run county court, and all criminal fine and probation supervision revenue and court and probation supervision expense impacts are local impacts to the City and County of Denver.

Municipal Court

Municipal charters may include criminal offenses that are unique to that municipality. The classifications and penalties for such municipal offenses vary by municipality. Typically, an offender convicted of a municipal offense is ordered to pay a fine. However, some municipal offenses could result in a sentence to county jail. Trials and hearings for such crimes are held in municipal court at the expense of the municipality, with fine and court administrative fees being collected by the municipality. Traffic infractions issued by municipal police, if challenged, are also heard in municipal court. Offenders charged with a municipal crime with a potential jail sentence are entitled to a public defender if they are deemed indigent. All such costs are also paid by the municipality.