



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

Drafting Number: LLS 19-0021
Prime Sponsors: Rep. Herod

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Bill Status: House Judiciary
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Bill Topic: SEXUAL ASSAULT WHILE IN CUSTODY OR DETAINED

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue (<i>minimal</i>)	<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

This bill creates the criminal offense of unlawful sexual conduct by a peace officer. This bill increases state revenue and expenditures and decreases local government revenue and expenditures on an ongoing basis.

Appropriation Summary: This bill requires a five-year appropriation of \$347,890 to the Department of Corrections.

Fiscal Note Status: This fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under HB 19-1250

		FY 2019-20	FY 2020-21
Revenue		-	-
Expenditures	General Fund	-	\$39,701
Transfers	General Fund	(\$178,471)	-
	Cash Funds	\$178,471	
TABOR Refund		-	-

Summary of Legislation

Under current law, sexual assault is generally a class 4 felony and unlawful sexual contact is a class 1 misdemeanor subject to modified sentencing as an extraordinary risk crime. This bill creates the crime of unlawful sexual conduct by a peace officer which is classified as a class 3 felony when sexual intrusion or penetration is inflicted on the victim and a class 4 felony when the victim is subject to unlawful sexual contact. Victim consent is not a defense to sexual contact by a peace officer. An offender convicted of unlawful sexual contact must register as a sex offender and an offender convicted of class 3 felony unlawful sexual conduct is subject to lifetime supervision.

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. The following sections outline data on crimes that are comparable to the offense in this bill and discuss assumptions on future rates of criminal convictions under the bill.

Prior conviction data. This bill creates the new offense of unlawful sexual conduct by a peace officer which is a class 3 or 4 felony depending on the circumstance. To form an estimate on the prevalence of this new crime, the fiscal note analyzed the existing offense of sexual assault (class 4 felony) and unlawful sexual contact when the victim is in custody of law enforcement or detained in a hospital (class 1 misdemeanor) as comparable crimes.

- *Sexual assault while in custody or detained.* From 2016 to 2018, 3 offenders have been convicted and sentenced for sexual assault when the victim is in the custody of law enforcement or detained in a hospital. Of the persons convicted, 2 were male and 1 did not have a gender identified. Demographically, 1 was White, 1 was African American, and 1 did not have a race identified. One offender was sentenced to the Department of Corrections (DOC) and the other two were sentenced to jail followed by probation.
- *Sexual contact while in custody or detained.* From 2016 to 2018, 4 offenders have been convicted and sentenced for sexual contact when the victim is in the custody of law enforcement or detained in a hospital. Of the persons convicted, 3 were male, 1 was female. Demographically all 4 were White and all 4 were sentenced to county jail.

Assumptions. While this bill is not expected to increase the number of criminal case filings for sexual offenses committed by a peace officer, it is assumed that 2 offenders will be convicted and sentenced to DOC in a five-year period as follows:

- 1 offender will be convicted every 5 years for class 3 felony unlawful sexual conduct by a peace officer with sexual intrusion or penetration and spend a greater amount of time in prison and on parole than under current law. Under current law, an offender convicted of a class 4 felony sex crime spends an average of 25 months in the DOC and 27.6 months on parole after release. An offender convicted under a class 3 felony sex crime under this bill will spend an average of 78.9 months in DOC followed by 46.6 months on parole.

- 1 offender will be convicted every 5 years for class 4 felony unlawful sexual conduct by a peace officer from sexual contact and will spend an average of 25 months in the DOC and 27.6 months on parole. Under current law an offender could be sentenced to up to 24 months in county jail for a class 1 misdemeanor sexual contact.

Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Revenue

By creating the offense of unlawful sexual conduct by a peace officer this bill increases state revenue from criminal fines and court fees by a minimal amount beginning in FY 2019-20, credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. Currently, a class 1 misdemeanor has a fine range of \$500 to \$5,000, a class 4 felony has a fine range of \$2,000 to \$500,000, and a class 3 felony has a fine range of \$3,000 to \$750,000. Offenders convicted of unlawful sexual conduct by a peace officer will be subject to a greater fine amount for similar offenses than under current law. Additionally, court fees may be imposed on a case-by-case basis for a variety of court-related costs, such as probation supervision, drug surcharges, or late fees. Because the courts have the discretion of incarceration, imposing a fine, or both, a precise state revenue impact cannot be determined. Criminal fine and court fee revenue is subject to TABOR, however under the March 2019 Legislative Council Staff forecast, a TABOR surplus is not expected in FY 2019-20 or FY 2020-21.

State Transfers

This bill requires a transfer of \$178,471 from the General Fund to the Capital Construction Fund in FY 2019-20. These funds must then be appropriated to the Corrections Expansion Reserve Fund. This amount is required to cover future DOC capital construction and may be used by the DOC for prison construction, expansion, or renovation projects that are approved by the General Assembly. DOC capital construction costs from the projected increase in prison population under this bill are discussed in the State Expenditure section.

State Expenditures

Beginning in FY 2019-20, this bill increases workload and costs in the Judicial Department and agencies that provide representation to indigent persons. It also increases Department of Corrections costs by \$347,890 as shown in Table 2. These impacts are discussed below.

Judicial Department. This bill will increase costs and workload for the trial courts in the Judicial Department. Unlawful sexual conduct by a peace officer cases will take longer to try and cases that previously would have been tried in county court will now be tried in district court. Costs and workload may also increase in the agencies that provide representation to indigent persons, including the Office of the State Public Defender and the Office of Alternate Defense Counsel. This will be offset by a decrease in costs and workload for the Division of Probation because offenders currently sentenced to probation will instead be sentenced to DOC. Overall, given the low number of case filings expected, it is assumed that this workload can be accomplished within existing appropriations. Should a change in funding be required for any agency or division with the Judicial Department, the fiscal note assumes it will be addressed through the annual budget process.

Department of Corrections - Five-year fiscal impact. Based on the assumptions provided in the Comparable Crime Analysis section, this bill increases prison operating, capital construction, and parole costs for the DOC by a total of \$347,890 over the five-year period beginning in FY2019-20. This five year impact includes \$178,471 for capital construction as described in the State Transfers section and \$169,419 for jail and parole operating costs for the five year period as shown in Table 2. The fiscal note assumes no prison impact will occur in the first year due to the amount of time required for criminal filing, trial, disposition and sentencing of each case. Once an offender is released from prison, he or she is assigned to parole; however, no impact is expected until the first year's cohort of offenders is released to parole.

**Table 2
 Prison and Parole Costs Under HB 19-1250**

Fiscal Year	Prison Bed Impact			Parole Impact		Total Cost
	Number	Operating Cost	Construction Cost*	Number	Operating Cost	
FY 2019-20	1.0	-	\$178,471	-	-	\$178,471
FY 2020-21	1.0	\$39,701	-	-	-	\$39,701
FY 2021-22	1.0	\$39,701	-	0.9	\$4,215	\$43,916
FY 2022-23	1.0	\$39,701	-	1.0	\$4,610	\$44,311
FY 2023-24	1.0	\$39,701	-	0.4	\$1,790	\$41,491
Total Cost		\$158,804	\$178,471		\$10,615	\$347,890

* Capital construction costs are based on the highest bed impact during the five-year period.

Local Government Impact

Beginning in FY 2019-20, this bill is expected to decrease local government revenue, costs, and workload as described below. The exact impact to a particular local government will vary depending on the number of offenses committed within its jurisdiction.

District attorneys. The bill increases costs and workload for district attorneys to prosecute unlawful sexual contact cases, which will take longer under this bill. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

County jails. Based on the assumptions listed in the Comparable Crime Analysis section, the bill will decrease county jail costs because an offender convicted of unlawful sexual contact that is a peace officer will no longer be able to be sentenced to county jail. Under current law, the state reimburses county jails for housing state inmates. Based on a 2018 Joint Budget Committee Staff county jail survey, the average cost to house an offender in a county jail is \$98.83 per day, but varies significantly from \$43.65 to \$350.21 per day depending on the county. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.93.

Denver County Court. The bill decreases revenue, costs and workload for the Denver County Court, which is managed and funded by the City and County of Denver, which will no longer try misdemeanor sexual contact cases involving a peace officer offender under the bill. Probation services in the Denver County Courts may also experience an decrease in revenue, costs, and workload revenue to supervise persons convicted under the bill within Denver County.

Effective Date

The bill takes effect July 1, 2019.

State Appropriations

For FY 2019-20, this bill requires an appropriation of \$178,471 from the Capital Construction Fund to the Corrections Expansion Reserve Fund for DOC capital construction costs. Additionally, this bill requires a General Fund appropriation of \$169,419 for the five-year DOC operating impacts identified in Table 2. The total DOC five-year appropriation required by this bill is \$347,890.

State and Local Government Contacts

Corrections District Attorneys Judicial Sheriffs