



**Colorado
Legislative
Council
Staff**

SB16-034

FISCAL NOTE

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

Drafting Number: LLS 16-0484

Date: January 22, 2016

Prime Sponsor(s): Sen. Sonnenberg

Bill Status: Senate Judiciary

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BILL TOPIC: TAMPERING WITH A DECEASED HUMAN BODY

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue		
Cash Funds	Potential increase.	
State Expenditures		
General Fund	Potential increase.	
Tabor Impact	Potential increase in revenue.	
Appropriation Required: None.		
Future Year Impacts: Potential minimal increase in state revenues and state expenditures.		

Summary of Legislation

This bill creates a new crime – tampering with a deceased human body – if a person acts without legal authority and with the belief that an official proceeding is pending or in progress and

- willfully destroys, conceals, or alters a human body with the intent to impair its appearance or availability for an official proceeding; or
- observes a human body under circumstances in which a reasonable person would believe an offense has been committed.

Further, the crime is applicable if a person knew or reasonably should have known that law enforcement is not aware of the existence or location of the human body and willfully fails to report the human body to law enforcement.

The bill classifies penalties for tampering with a human body as follows:

- class 3 felony if the body is related to a charge of a class 1 or class 2 felony;
- class 4 felony if the body is related to a charge of a class 3 or class 4 felony;
- class 5 felony if the body is related to a charge of a class 5 or class 6 felony; and
- class 1 misdemeanor if the body is related to any misdemeanor charge.

The bill excludes human remains from the definition of physical evidence, with regards to the existing offense of tampering with physical evidence.

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., 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. While this bill creates a new crime, there are two existing criminal offenses which may be used to prosecute the conduct prohibited by SB16-034.

Tampering with physical evidence. Tampering with physical evidence is a class 6 felony. Over the past three years, there have been 224 convictions for this offense. Of these, 58 were female (4 African American, 1 Hispanic, 2 Other, and 51 Caucasian) and 162 were male (1 Asian, 19 African American, 8 Hispanic, 7 Other, and 127 Caucasian). Race and gender data were not available for four cases. The penalty for a class 6 felony is a term of incarceration in the Department of Corrections of between one year and 18 months, a fine of between \$1,000 and \$100,000, or both.

Concealing death. Concealing death is a class 1 misdemeanor. Over the past three years, there have been four convictions for this offense. Of these, 2 were female and 2 were male; all were Caucasian. The penalty for a class 1 misdemeanor is a term of incarceration in a county jail of 6 to 24 months, a fine of \$500 to \$5,000, or both.

State Revenue

Overall and beginning in FY 2016-17, the bill may increase state cash fund revenue from fines by a minimal amount. Fine revenue is credited to the Fines Collection Cash Fund in the Judicial Department. The fiscal note assumes that the majority of cases involving the conduct contemplated by this bill are being charged under current law. To the extent the passage of this bill causes certain cases to be charged as a felony rather than as a misdemeanor, fine revenue may increase.

TABOR Impact

This bill may increase state revenue from cash funds, which will increase the amount of money required to be refunded under TABOR.

State Expenditures

This bill is anticipated to increase workload beginning in FY 2016-17 for the Judicial Department and may increase costs to the Department of Corrections (DOC) in FY 2018-19 and in future years. These impacts are described below.

Judicial Department. To the extent that the bill results in lengthier or more complicated trials, the bill may increase workload for the trial courts to hear cases and for the Office of the State Public Defender and Office of Alternate Defense Counsel to provide representation for any persons deemed to be indigent. The fiscal note assumes any such increases are minimal and will not require an increase in appropriations for any agency within the Judicial Department.

Department of Corrections (DOC). The Department of Corrections may experience an increase in costs if individuals who would previously be charged with misdemeanors are instead charged with felonies, or if individuals who tamper with human remains receive longer sentences. In some scenarios, a person could be charged and convicted of a new crime under the bill that would not have been brought under current law. To the extent a net impact to DOC occurs, the fiscal note assumes it will be addressed through the annual budget process.

Because at least two charges of varying severity must be present -- the original charge relating to the human remains and the secondary charge of tampering with or observing human remains without reporting it -- and because prosecutors can charge these behaviors in a variety of ways under current law, the precise impact to expenditures cannot be determined. The following examples illustrate potential impacts to DOC.

An individual charged under the bill for observing human remains he or she reasonably believes have been involved in a crime and failing to report it could face a level 3 felony charge if the body involved murder, even if the individual was not involved in the murder. Rather than facing a charge of concealing death, a class 1 misdemeanor, or civil liability for failing to report a crime, the individual could be convicted of a class 3 felony if he or she knew an official proceeding was pending or in progress. Offenders convicted of class 3 felonies spend an average of 67 months in prison. Without knowing the exact circumstances of the crimes or the charging behavior of prosecutors, it is difficult to estimate the likelihood of new felony convictions under the bill. The fiscal note assumes this scenario would be rare.

For cases where an individual may be charged under the bill for multiple crimes, the potential impact to DOC varies depending on the nature of the crimes committed and whether or not convictions carry consecutive or concurrent sentences. The fiscal note assumes that most cases involving tampering with human remains are being charged under current law as tampering with physical evidence, a class 6 felony. Because offenders convicted of a class 6 felony spend on average 11.8 months in prison, new cases involving a class 3 felony charge of tampering with human remains could impact DOC after one year. The fiscal note assumes, however, that individuals charged with tampering with physical evidence related to the commission of serious crimes like murder are already being charged with other serious offenses. Without knowing the exact circumstances or frequency of the crimes or the charging behavior of prosecutors, it is not possible to estimate the impact to DOC.

Local Government Impact

This bill will affect local governments in several ways, as discussed below. Overall, it is assumed that the impact of this bill will be minimal for all local governments.

Prosecution. To the extent that this bill makes it easier for certain cases to be prosecuted as a felony rather than a misdemeanor, costs and workload for district attorneys will increase.

County jail costs. To the extent that this bill decreases misdemeanor convictions and offenders are sentenced to prison instead of jail, costs will decrease. The cost to house an offender in county jails varies from about \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$52.74 to house state inmates.

Effective Date

The bill takes effect August 10, 2016, if the General Assembly adjourns on May 11, 2016, as scheduled, and no referendum petition is filed. The bill applies to offenses committed on or after this date.

State and Local Government Contacts

District Attorneys
Public Health & Environment
Office of Information Technology

Counties
Corrections
Cities

Coroners
Judicial
Sheriffs

Research Note Available

An LCS Research Note for SB 16-034 is available online and through the iLegislate app. Research notes provide additional policy and background information about the bill and summarize action taken by the General Assembly concerning the bill.