



Legislative  
Council Staff

*Nonpartisan Services for Colorado's Legislature*

**HB 20-1121**

# FINAL FISCAL NOTE

**Drafting Number:** LLS 20-0058  
**Prime Sponsors:** Rep. Mullica; Soper

**Date:** April 23, 2020  
**Bill Status:** Postponed Indefinitely  
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**Bill Topic:** **RETALIATION AGAINST AN ELECTED OFFICIAL**

**Summary of Fiscal Impact:**

<input checked="" type="checkbox"/> State Revenue	<input checked="" 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 would have added elected officials and their families to the existing class 4 felony crime of retaliation against a judge. Beginning in FY 2020-21, the bill would have increased state expenditures by \$322,189 over a five-year period and increased state revenue by an undetermined amount. It would have also increased workloads and decreased costs to local governments.

**Appropriation Summary:** This bill would have required a total five-year appropriation of \$322,189 to the Department of Corrections. In addition, capital construction funding of \$356,942 could have been appropriated to the department. See State Appropriations section.

**Fiscal Note Status:** This fiscal note reflects the introduced bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

**Table 1**  
**State Fiscal Impacts Under HB 20-1121**

		FY 2020-21	FY 2021-22
<b>Revenue</b>		-	-
<b>Expenditures</b>	General Fund	-	\$42,665
<b>Transfers</b>		-	-
<b>TABOR Refund</b>		-	-

## Summary of Legislation

This bill adds elected officials and their families to the existing class 4 felony of retaliation against a judge if an individual makes a credible threat or commits an act of harassment or an act of harm or injury upon a person or property as retaliation or retribution. Elected official is defined to mean any person who is serving in an elected position in the state of Colorado at any level of government.

## 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 changes the element of the existing offense of retaliation against a judge by adding retaliation against an elected official. From January 1, 2016, to December 31, 2019, eight total cases have been convicted and sentenced for this offense, for an approximate average of three per year. Of the persons convicted, all eight were male. Demographically, seven were White and one was classified as "Other."

**Assumptions.** Based on an average of three cases per year charged under the existing offense, the fiscal note assumes that there will be approximately three new cases and at least one new conviction for the modified class 4 felony per year.

## State Revenue

By modifying an existing felony offense, the bill will increase state revenue from criminal fines and court fees by a minimal amount beginning in FY 2020-21, credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. The fine penalty for a class 4 felony ranges from \$2,000 to \$500,000. 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.

## State Expenditures

Beginning in FY 2020-21, the bill will increase state General Fund expenditures by at least \$322,189 in the Department of Corrections (DOC) over a five-year period. The bill may also potentially increase future capital construction costs in the DOC, as discussed below. Finally, the bill will increase workload and costs in the Judicial Department and agencies that provide representation to indigent persons.

**Department of Corrections operating and parole costs (five-year fiscal impact).** Based on the assumptions provided in the Comparable Crime Analysis section, this bill increases prison operating and parole costs for the DOC by a total of \$322,189 over the five-year period beginning in FY 2020-21. The fiscal note assumes 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. Once an offender is released from prison, he or she is assigned to parole. Table 2 shows the estimated cost of the bill over the next five fiscal years.

**Table 2  
Prison and Parole Costs Under Bill**

<b>Fiscal Year</b>	<b>Estimated Bed Impact</b>	<b>Estimated Parole Impact</b>	<b>Total Operating Cost</b>
FY 2020-21	-	-	-
FY 2021-22	1.0	-	\$42,665
FY 2022-23	2.0	-	\$85,330
FY 2023-24	2.1	0.9	\$94,166
FY 2024-25	2.1	1.9	\$100,028
<b>Total Cost</b>			<b>\$322,189</b>

**Department of Corrections capital construction costs.** In addition to the five-year operating and parole impacts discussed above, Section 2-2-703, C.R.S. requires that the General Assembly consider increased capital construction costs for the DOC to house additional inmates. Based on the average per bed construction costs of previous prison facilities, capital construction costs of \$356,942 would be required to increase prison bed space in line with the estimated increase in prison population under this bill. If the General Assembly determines that additional prison bed space is needed, this bill should include a transfer of General Fund to the Capital Construction Fund and a reappropriation of this funding to the Corrections Expansion Reserve Fund. Money in the Corrections Expansion Reserve Fund is available for future DOC construction projects, which would be identified and funded through the annual budget process based on the state's overall prison needs.

**Judicial Department.** This bill will increase costs and workload for the trial courts in the Judicial Department to process additional criminal case filings. To the extent that offenders are sentenced to probation, costs and workload in the Division of Probation will increase. 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 Council. Overall, 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.

**TABOR refunds.** The bill is expected to increase state General Fund obligations for TABOR refunds in FY 2020-21 and FY 2021-22. Under current law and the December 2019 Legislative Council Staff forecast, the bill will correspondingly increase the amount refunded to taxpayers via sales tax refunds made available on income tax returns for tax years 2021 and 2022, respectively. A forecast of state revenue subject to TABOR is not available beyond FY 2021-22.

## Local Government Impact

Beginning in FY 2020-21, this bill is expected to increase local government 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.** By adding elected officials to the existing class 4 felony of retaliation against a judge, the bill will increase costs and workload for district attorneys to prosecute these cases. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

**County jails.** The bill is expected to decrease county jail costs, as individuals convicted of threatening behavior toward an elected official are currently charged with misdemeanor penalties, such as menacing, and sentenced to county jail may now be sentenced to the DOC for a felony offense. Because the courts have the discretion of incarceration, the precise county impact cannot be determined. Based on 2019 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.

## State Appropriations

Starting in FY 2020-21, this bill requires a General Fund appropriation to the Department of Corrections of \$322,189 for the five-year operating impacts identified in Table 2.

As discussed in the department's capital construction costs section above, the General Assembly may appropriate \$356,942 for prison bed construction, if needed.

## Effective Date

The bill was postponed indefinitely by the House Judiciary Committee on January 30, 2020.

## State and Local Government Contacts

Corrections  
Legislative Legal Services

Judicial  
Public Safety

Law