



Legislative Council Staff
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Fiscal Note

Drafting Number: LLS 21-0772 **Date:** February 18, 2021
Prime Sponsors: Sen. Garcia; Cooke **Bill Status:** Senate Judiciary
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Bill Topic: **RETALIATION AGAINST AN ELECTED OFFICIAL**

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

This bill adds elected officials and their families to the existing class 4 felony crime of retaliation against a judge. The bill will increase state expenditures, and may increase state revenue, local workload, and decrease local costs.

Appropriation Summary: This bill requires a total five-year appropriation of \$191,319 to the Department of Corrections. In addition, capital construction funding has been estimated; see State Appropriations section.

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

Table 1
State Fiscal Impacts Under SB 21-064

	Budget Year FY 2021-22	Out Year FY 2022-23
Revenue	-	-
Expenditures General Fund	-	\$23,276
Transfers	-	-
TABOR Refund	-	-

Summary of Legislation

Under current law, an individual commits retaliation against a judge, a class 4 felony, if the individual makes a credible threat against, commits an act of harassment upon, or commits an act of harm or injury upon a judge, someone in the judge's family or in close relationship with the judge, or a person residing in the same household with the judge.

This bill adds elected officials to this crime. Elected official is defined as 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 all Colorado elected officials. From 2018 to 2020, 12 have been convicted and sentenced for the existing offense. Of the persons convicted, all 12 were male. Demographically, 11 were White, and 1 was classified as "Other."

Assumptions. The fiscal note assumes the behavior contemplated by this bill is currently prosecuted as a crime of harassment (a class 1 misdemeanor) or stalking (a class 5 felony), for example; however, no specific data are available to link past convictions to victims. Based on an average of four convictions per year under the existing offense related to judges, the fiscal note assumes that at least one existing misdemeanor will become a new class 4 felony conviction under the bill. The average Department of Corrections (DOC) length of stay for a class 4 felony is 28.3 months with an average parole length of stay of 24.2 months once the offender is released from prison.

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

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 2021-22, 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 2021-22, the bill will increase state General Fund expenditures by an estimated \$191,319 in the 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 prison and parole costs (five-year fiscal impact). Based on the assumptions provided in the Comparable Crime Analysis section, this bill increases prison operating costs for the DOC by a total of \$191,319 over the five-year period beginning in FY 2021-22. 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. The parole impact is assumed to first occur in FY 2024-25. Prison operating costs are \$63.77 (private rate) and parole operating costs are \$14.19 per offender per day. Table 2 shows the estimated cost of the bill over the next five fiscal years.

**Table 2
Prison and Parole Operating Costs Under SB 21-064**

Fiscal Year	Estimated Bed Impact	Estimated Parole Impact	Total Operating Cost
FY 2021-22	-	-	-
FY 2022-23	1.00	-	\$23,276
FY 2023-24	2.00	-	\$46,552
FY 2024-25	2.36	0.65	\$58,156
FY 2025-26	2.36	1.65	\$63,335
Five Year Total			\$191,319

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 \$420,299 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, to be reappropriated 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 of 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. Overall, it is assumed that this workload can be accomplished within existing appropriations.

TABOR refunds. Under the December 2020 Legislative Council Staff Economic and Revenue Forecast, the state is not expected to collect revenue above the TABOR limit in either FY 2021-22 or FY 2022-23, and refund obligations are not anticipated for these years. This bill does not change these expectations concerning refunds to taxpayers.

Local Government Impact

Beginning in FY 2021-22, this bill may increase workload for district attorney's offices and decrease costs for county jails and the Denver County Court. 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 may 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 may decrease county jail costs, as individuals convicted of threatening behavior toward an elected official may currently be charged with misdemeanor penalties, such harassment, and may now be sentenced to the DOC for a felony offense.

Denver County Court. The bill may decrease costs for the Denver County Court, which is managed and funded by the City and County of Denver, if less misdemeanor cases are tried under the bill.

Effective Date

The bill takes effect July 1, 2021, and applies to offenses committed on or after this date.

State Appropriations

Starting in FY 2021-22, this bill requires a General Fund appropriation of \$191,319 for the five-year Department of Corrections operating impacts identified in Table 2.

As discussed in the Department of Corrections capital construction costs section above, the General Assembly may appropriate \$420,299 beds for prison bed construction, as necessary.

State and Local Government Contacts

Alternate Defense Counsel
Judicial
Public Safety

Corrections
Law

District Attorneys
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