



**Legislative Council Staff**

*Nonpartisan Services for Colorado's Legislature*

**Revised Fiscal Note**

(replaces fiscal note dated February 18, 2021)

<b>Drafting Number:</b>	LLS 21-0772	<b>Date:</b>	March 23, 2021
<b>Prime Sponsors:</b>	Sen. Garcia; Cooke Rep. Mullica	<b>Bill Status:</b>	Senate Appropriations
		<b>Fiscal Analyst:</b>	Erin Reynolds   303-866-4146 Erin.Reynolds@state.co.us

**Bill Topic: RETALIATION AGAINST AN ELECTED OFFICIAL**

<b>Summary of Fiscal Impact:</b>	<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 creates offenses for retaliation against elected officials and their families. The bill will increase state and local revenue and expenditures on an ongoing basis.

**Appropriation Summary:** This bill requires a total five-year appropriation of \$71,524 to the Department of Corrections. In addition, capital construction funding has been estimated. See State Appropriations section.

**Fiscal Note Status:** The revised fiscal note reflects the introduced bill, as amended by the House Judiciary Committee.

**Table 1  
State Fiscal Impacts Under SB 21-064**

		<b>Budget Year FY 2021-22</b>	<b>Out Year FY 2022-23</b>
<b>Revenue</b>		-	-
<b>Expenditures</b>	General Fund	-	\$16,279
<b>Transfers</b>		-	-
<b>TABOR Refund</b>		-	-

## **Summary of Legislation**

The bill creates a crime of retaliation against an elected official. An individual commits the crime who makes a credible threat against or commits an act of harassment as retaliation or retribution against an elected official, their family members or close relations, or a person residing in the same household. The crime is a class 1 misdemeanor, unless committed by means of a credible threat, in which case it is a class 6 felony.

"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 creates the crime of retaliation against an elected official. To form an estimate on the prevalence of this new crime, the fiscal note analyzed the existing offense of retaliation against a judge as a comparable crime. From 2018 to 2020, 12 individuals 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 6 felony conviction per year under the bill. The average Department of Corrections (DOC) length of stay for a class 6 felony is 7.4 months with an average parole length of stay of 9.6 months once the offender is released from prison.

Visit [leg.colorado.gov/fiscalnotes](http://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 6 felony ranges from \$1,000 to \$100,000. 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 \$71,524 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 \$71,524 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 2022-23. 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**

<b>Fiscal Year</b>	<b>Estimated Bed Impact</b>	<b>Estimated Parole Impact</b>	<b>Total Operating Cost</b>
FY 2021-22	-	-	-
FY 2022-23	0.6	0.4	\$16,279
FY 2023-24	0.6	0.8	\$18,415
FY 2024-25	0.6	0.8	\$18,415
FY 2025-26	0.6	0.8	\$18,415
<b>Five-Year Total</b>			<b>\$71,524</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 \$109,462 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.** The bill increases state revenue subject to TABOR. For FY 2022-23, the March 2021 LCS forecast projects revenue to fall short of the TABOR limit by \$28.6 million, or 0.2 percent of the limit. If actual revenue exceeds the limit, the bill will increase the amount required to be refunded to taxpayers from the General Fund in FY 2023-24.

## **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 creating a new class 1 misdemeanor and class 6 felony, 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 increase county jail costs, as additional individuals convicted of threatening behavior toward an elected official may be charged with misdemeanor penalties. Conversely, costs may be decreased to the extent more individuals are sentenced to the DOC under the bill.

**Denver County Court.** The bill may increase costs for the Denver County Court, which is managed and funded by the City and County of Denver, if additional misdemeanor cases are tried under the bill in that jurisdiction.

## **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 \$71,524 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 \$109,462 for prison bed construction, as necessary.

## **State and Local Government Contacts**

Alternate Defense Counsel  
Judicial  
Public Safety

Corrections  
Law

District Attorneys  
Public Defender