



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number: LLS 23-1012 Date: November 28, 2023
Prime Sponsors: Rep. Weissman; Soper Bill Status: Signed into Law
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Bill Topic: FELONY SENTENCING COMMISSION RECOMMENDATIONS

- Summary of Fiscal Impact:
[X] State Revenue [ ] TABOR Refund
[X] State Expenditure [X] Local Government
[ ] State Transfer [ ] Statutory Public Entity

The bill increase and decreases classifications of certain felony offenses. The bill results in a one-time increase in state expenditures in FY 2023-24, and will decrease state revenue and expenditures on an ongoing basis. The bill also impacts local revenue and expenditures.

Appropriation Summary: For FY 2023-24, the bill requires and includes an appropriation of \$32,170 to the Judicial Department.

Fiscal Note Status: The final fiscal note reflects the enacted bill. It has been updated to correct outyear parole impacts in Table 11.

Table 1
State Fiscal Impacts Under HB 23-1293

Table with 4 columns: Category, Sub-category, Budget Year FY 2023-24, and Out Year FY 2024-25. Rows include Revenue, Expenditures (General Fund, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (General Fund Reserve).

**Summary of Legislation**

Starting on October 1, 2023, the bill increases and decreases certain felony offense classifications (Tables 2 and 3, respectively); modifies offenses (Table 4); removes certain offenses (Table 5); adds new crimes (Table 6); and removes mandatory sentences for certain felony offenses (Table 7).

**Table 2  
Felony Crimes with Increased Classification**

<b>Crime</b>	<b>Current Law Classification</b>	<b>Classification Under Bill</b>
<b>Second degree kidnapping of a child</b>	F4	F2
<b>Medical record theft</b> if record is stolen or disclosed to an unauthorized person	F6	F5
<b>Criminal possession of forgery devices</b>	F6	F5
<b>Criminal impersonation</b> when impersonation includes marriage, bail, or surety	F6	F5
<b>Criminal possession of a forgery device with intent to use</b>	F6	F5
<b>Identity theft with 3 or more financial devices or person's identifying information</b>	F6	F5
<b>Criminal possession of a financial device</b> for possessing three devices	F6	F5
<b>False report of explosives, weapons, or harmful substances</b>	F6	F5
<b>Impersonating a peace officer</b>	F6	F5
<b>Riots in detention facilities</b> (removes mandatory imprisonment for active participation in a riot where a weapon is not employed)	UF (2-10 years)	F4
<b>Designation for past official behavior</b>	F6	F4
<b>Designation of supplier prohibited</b> if committed by public servant	F6	F5
<b>Misuse of official information</b>	F6	F5
<b>Jury tampering</b> for non-class 1 felony trials	F5	F4
<b>Failure or refusal to leave premise on requires of officer</b> when persons knowingly holds another person hostage by having a firearm	F4	F3
<b>Failure or refusal to leave premise on requires of officer</b> when person knowingly holds another person hostage by making person believe the person has a gun	F5	F4
<b>Cruelty to animals</b>	F6 or F5	F4
<b>Possession of weapon on school ground</b> if it is a firearm	F6	F5
<b>Personal profit on state money</b>	F6	F5
<b>False or fraudulent return</b>	UF	F5

**Table 3  
Felony Crimes with Decreased Classification**

<b>Crime</b>	<b>Current Law Classification</b>	<b>Classification Under Bill</b>
<b>False statement for worker's compensation claim</b>	F5	F6
<b>First degree arson</b> if arson is of an unoccupied building	F3	F4
<b>Third degree arson</b>	F4	F5
<b>Second degree burglary</b> if burglary is not of an occupied structure, operation of a commercial business, or dwelling, and doesn't have the objective of theft of a controlled substance or firearm	F4	F5
<b>Theft of medical records</b> if record is stolen or disclosed to an unauthorized person	F6	M1
<b>Second degree criminal trespass</b> if trespass is on agricultural land with intent to commit a felony	F4	F5
<b>Third degree criminal trespass on agricultural land with intent to commit a felony</b> if land did not have fence	F5	F6
<b>Insurance fraud</b> when person submits a certificate of insurance that contains false information	F5	F6
<b>Fraudulent receipt</b>	F6	M2
<b>Criminal possession of a financial device</b> for possessing two devices	F6	M2
<b>Retaliation against a witness or victim</b>	F3	F4
<b>Wiretapping</b> for corded phones	F6	M2
<b>Telecommunications crime</b> if person uses cloning equipment, or encourages persons to engage in certain activities	F4	M2
<b>Possession of ballistic knife</b> making it a an "illegal weapon" instead of dangerous weapon	F5	M1
<b>Explosives or incendiary devices</b> when a person possesses or controls device	F4 or F3	F5 or F4
<b>Dueling</b>	F4	M1
<b>Hazardous waste violation</b> when abandoning vehicle containing hazardous waste	F4	F5
<b>Unlawful entry by excluded and ejected persons</b>	F5	F6
<b>Unauthorized advertising for adoption purposes</b>	F6	M2
<b>State agency contracts offering to secure contracts for professional services</b>	F3	F4
<b>False statement for police and firefighter pension</b>	F5	F6
<b>Unlawful custody and possession of a stray</b>	F6	M2
<b>Tax evasion</b>	F5	F6
<b>Using sports betting or lottery license for personal gain</b>	F3	F4

**Table 4  
Modified Crimes**

<b>Crime</b>	<b>Modification</b>
<b>Assault in the second degree</b>	Removes when an actor is confined in a detention facility and harasses, annoys, threatens, or alarms another person in the detention facility
<b>Second degree kidnapping</b>	Adds that movement increases the risk of harm to the person
<b>Forgery</b>	Removes “check”
<b>Unauthorized absence</b>	Adds transitions from the Department of Human Services to a residential treatment facility or programs

**Table 5  
Removal of Crimes<sup>1</sup>**

<b>Crime</b>	<b>Classification Under Current Law</b>
<b>First degree burglary of a controlled substance from pharmacy</b>	F2
<b>Aggravated robbery of controlled substance</b>	F2
<b>Second or subsequent offense of theft of trade secret</b>	F5
<b>Cybercrime</b> second conviction of a cybercrime or any criminal act would be a felony under the statute	F6
<b>Second or subsequent violation of animal fighting</b>	F4
<b>Second or subsequent offense of wiretapping and eavesdropping devices</b>	F5
<b>Second or subsequent telecommunications crime</b>	F6 and F4
<b>Repeating gambling offender offenses</b>	Seven F5s and two F6s
<b>Sequent violations of possessing a dangerous weapon</b>	F4
<b>Second offense of violating sale of secondhand property record and inspection</b>	F5
<b>Second offense of administration of gamma hydroxybutyrate or ketamine</b>	F2
<b>Smuggling of humans</b>	F3
<b>Second offense of taxation provisions</b>	F5
<b>Second offense of violation of sale activity following license denial wholesalers and power sports vehicles</b>	F6
<b>Unlawful entry by excluded and ejected persons</b>	F5

<sup>1</sup> Removal of crimes indicates that a specific offense is removed, offenders may still be prosecuted under other statutes.

**Table 6  
New Crimes Under Bill**

<b>Crime</b>	<b>Classification Under Current Law</b>
<b>Aggravated retaliation against a witness or victim</b>	F3

**Table 7  
Eliminated Mandatory Sentences**

<b>Crime</b>	<b>Sentence Under Current Law</b>
<b>Second violation of identity theft</b>	Sentence to the DOC for a term 2x the minimum presumptive range to 2x the maximum
<b>Riots in detention facilities</b> for active participation in a riot and does not employ a weapon	Punishment must be imprisonment in the DOC for 2 to 10 years
<b>Vehicular eluding</b>	Increase in minimum fine ranging from \$2,000 to \$6,000
<b>Explosives or incendiary devices</b>	Mandatory minimum sentence of 2 to 4 years

### **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 creates a new factual basis for an existing crime. The following section outlines crimes that are comparable to the offense in this bill and discusses assumptions on future rates of criminal convictions resulting from the bill.

**Prior conviction data.** This bill both increases and decreases felony crime classifications, as well as removes, modifies, and adds felony crimes. From FY 2019-20 to FY 2021-22, 3,909 individuals have been convicted and sentenced for the offenses included in the bill. Of the persons convicted, 3,179 were male, 725 were female, and 5 did not have a gender identified. Demographically, 3,313 were White, 274 were Black/African American, 203 were Hispanic, 35 were Asian, 21 were American Indian, 60 were classified as "Other," and 3 did not have a race identified. The fiscal note bases its assumptions on DOC sentences resulting from these offenses, as outlined in the section below. Visit [leg.colorado.gov/fiscalnotes](http://leg.colorado.gov/fiscalnotes) for more information about criminal justice costs in fiscal notes.

### **Assumptions**

The fiscal note assumes that decisions to sentence an individual to the Department of Corrections (DOC) will not be impacted by reclassifying an offense, except in cases where the offense is reclassified from a felony to a misdemeanor. The fiscal note uses data provided by the Judicial Department to determine the number of individuals sentenced to the DOC for the various offenses. As shown in Table 8 and Table 9, the fiscal note identified the following offenses that had individuals sentenced to the DOC in the last three fiscal years.

**Table 8**  
**Average Number Sentenced to DOC per Year for Crimes Increasing in Classification**

Description of Crime	Citation	Avg. Annual DOC Sentences
Second Degree Kidnapping	18-3-302 (2)	2
Criminal Possession of Forgery Devices	18-5-109 (1)(a),(b),(c), & (d)	5
Criminal Impersonation False Identity	18-5-113 (1)(a)(i)(ii)	2
Possession of Forgery Devices	18-5-706	1
False Reporting of Explosives	18-8-110	3
Impersonating a Police Officer	18-8-112	3
Aggravated Cruelty to Animals	18-9-202 (1.5)	4
Possession of a Firearm on School Grounds <sup>1</sup>	18-12-105.5 (1)	3
<b>Total</b>		<b>23</b>

<sup>1</sup> Because the reclassification only applies to carrying a firearm onto school grounds, the fiscal note assumes that 75 percent of offenses under 18-12-105.5(1) involve a firearm.

**Table 9**  
**Average Number Sentenced to DOC per Year for Crimes Decreasing in Classification**

Description of Crime	Citation	Avg. Annual DOC Sentences
Second Degree Trespassing- Ag. Land	18-4-503 (2)(b)	3
Third Degree Criminal trespassing- Ag. Land	18-4-504 (2)(b)	2
Possession of Two Financial Devices <sup>1</sup>	18-5-903 (2)(b)	42
Possession of Ballistic Knife <sup>2</sup>	18-12-102 (3)	2
Tax Evasion	39-21-118 (1)	3
<b>Total</b>		<b>52</b>

<sup>1</sup> Because the reclassification only applies to having two financial devices, the fiscal note assumes that 50 percent of offenses under 18-5-903(2)(b) involve two devices.

<sup>2</sup> Because the reclassification only applies to possessing a ballistic knife, the fiscal note assumes that 10 percent of offenses under 18-12-102(3) involve a ballistic knife.

The fiscal note then applied the average length of stay for each of the felonies to estimate the bed impact to the DOC. Sentences for possession of two financial devices and possession of a ballistic knife will no longer be sentenced to the DOC, as these offenses are reclassified as a misdemeanor.

## State Revenue

By reducing some crimes from a felony to a misdemeanor, state revenue will decrease. Based on revenue collection data reported from the Judicial Department, the reduction is expected to be minimal. Revenue from court and criminal fees are subject to the state's TABOR limit.

**State Expenditures**

The bill increases state expenditures by about \$39,000 in FY 2023-24 and decreases state expenditures by about \$785,000 in FY 2024-25, paid from the General Fund. Expenditures are shown in Table 10 and detailed below.

**Table 10**  
**Expenditures Under HB 23-1293**

	FY 2023-24	FY 2024-25
<b>Judicial Department</b>		
Personal Services	\$23,695	\$56,867
Operating Expenses	\$1,275	\$2,160
Capital Outlay Costs	\$7,200	\$400
Centrally Appropriated Costs <sup>1</sup>	\$6,225	\$14,139
Personal Services – FTE	0.4 FTE	0.8 FTE
<b>Judicial Subtotal</b>	<b>\$38,395</b>	<b>\$73,566</b>
<b>Department of Corrections</b>		
Operating Costs (See Table 11 for detail)	-	(\$858,932)
<b>DOC Subtotal</b>	-	(\$858,932)
<b>Total</b>	<b>\$38,395</b>	<b>(\$785,366)</b>
<b>Total FTE</b>	<b>0.4 FTE</b>	<b>0.8 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Judicial Department.** Starting in FY 2023-24, expenditures in the Judicial Department will increase by \$39,000 in FY 2023-24 and \$74,000 in FY 2024-25 to supervise more offenders sentenced to probation due to the lower classification of crimes. In addition, workload for the trial courts will decrease as cases move from state administered courts to Denver County Court.

- **Probation Department.** The Probation Division will require 0.8 FTE to supervise additional offenders sentenced to probation in lieu of the DOC. This includes 0.6 FTE probation officer and 0.2 FTE support staff. Costs for the additional staff include standard operating and capital outlay costs. Costs in FY 2023-24 assume a January 1 start date and the General Fund pay date shift.
- **Trial courts.** Starting in FY 2023-24, workload to the trial courts will decrease to the extent additional cases are heard in Denver County Court instead of state-administered courts. In addition, to the extent cases last longer due to some classifications going up, workload to the courts will increase.
- **Information technology.** The bill's reclassification of crimes will require updates to the department's case management system. This work can be accomplished within existing appropriations.

**Department of Corrections prison and parole costs (five-year impact).** Section 2-2-701, C.R.S., requires Legislative Council Staff to provide information to the General Assembly on long-term costs for prison capital construction, operations, and parole for any bill that potentially increases periods of imprisonment in the Department of Corrections. These impacts are described below.

As discussed in the Assumptions section, the bill decreases prison operating costs by a total of \$3.2 million over the five-year period beginning in FY 2024-25. 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, the offender is assigned to parole. The parole impact is assumed to first occur in FY 2024-25. Table 11 shows the estimated cost of the bill over the next five fiscal years.

**Table 11  
Prison and Parole Operating Costs Under HB 23-1293**

<b>Fiscal Year</b>	<b>Prison ADP Impact</b>	<b>Prison Cost</b>	<b>Parole ADP Impact</b>	<b>Parole Cost</b>	<b>Total Costs</b>
FY 2023-24	-	-	-	-	-
FY 2024-25	(27)	(\$729,001)	(17)	(\$129,931)	<b>(\$858,932)</b>
FY 2025-26	(22)	(\$587,713)	(39)	(\$301,105)	(\$888,818)
FY 2026-27	(20)	(\$536,221)	(29)	(\$224,442)	(\$760,663)
FY 2027-28	(17)	(\$472,985)	(30)	(\$232,191)	(\$705,175)
			<b>Total</b>		<b>(\$3,213,588)</b>

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 10.

**Other Budget Impacts**

**TABOR refunds.** The bill is expected to decrease the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the March 2023 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2024-25. Because TABOR refunds are paid from the General Fund, decreased General Fund revenue will lower the TABOR refund obligation, but result in no net change to the amount of General Fund otherwise available to spend or save.

**General Fund reserve.** Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve in FY 2023-24 and decrease amounts in FY 2024-25 by the amounts shown in Table 1.



## Local Government

**District attorneys.** Similar to the state, to the extent some cases take longer due to the increase in classification, workload to district attorney offices will increase. However, to the extent cases become less complicated as classifications decrease, workload will decrease. District attorney offices are funded at the county level.

**Denver County Court.** Starting in FY 2023-24, revenue to and expenditures in the Denver County Court will increase to hear cases that become misdemeanors. Denver County Court is funded by the City and County of Denver.

**County jails.** To the extent more individuals are sentenced to jail instead of being sentenced to the DOC, jail costs will increase. County jails are funded at the county level.

## Effective Date

The bill was signed into law by the Governor on June 1, 2023, and takes effect October 1, 2023. The bill applies to offenses committed on or after October 1, 2023.

## State Appropriations

For FY 2023-24, the bill requires and includes an appropriation of \$32,170 from the General Fund to the Judicial Department and 0.4 FTE

## State and Local Government Contacts

Corrections

District Attorney

Judicial