



Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number: LLS 23-0264 **Date:** July 10, 2023
Prime Sponsors: Sen. Zenzinger; Gardner **Bill Status:** Signed into Law
Rep. Bird; Soper **Fiscal Analyst:** Aaron Carpenter | 303-866-4918
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Bill Topic: **MOTOR VEHICLE THEFT AND UNAUTHORIZED USE**

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

The bill modifies and reclassifies motor vehicle theft offenses and creates a new misdemeanor offense for unauthorized use of a motor vehicle. Starting in FY 2023-24, the bill increases state revenue and expenditures and may impact local government workload on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill requires and includes an appropriation of \$24,409 to the Department of Revenue.

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

Table 1
State Fiscal Impacts Under SB 23-097

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	General Fund	-	\$557,895
	Cash Funds	\$24,409	-
	Total Expenditures	\$24,409	\$557,895
Transfers		-	-
Other Budget Impacts	General Fund Reserve	-	\$83,684

Summary of Legislation

Under current law, there are two degrees of aggravated motor vehicle theft based on vehicle value. Aggravated motor vehicle theft in the first degree ranges from a class 3 felony to a class 5 felony, and aggravated motor vehicle theft in the second degree ranges from a class 5 felony to a class 1 misdemeanor.

This bill modifies and reclassifies these crimes by establishing three degrees of motor vehicle theft and making the classification of the crime based on the circumstances around the crime rather than vehicle value, as follows:

- **first degree motor vehicle theft, a class 3 felony (F3)**, for a person who has two prior convictions of auto theft;
- **second degree motor vehicle theft, a class 4 felony (F4)**, for a person who knowingly obtains another's vehicle without authorization and there are vehicle alterations or damages, among other circumstances; and
- **third degree motor vehicle theft, a class 5 felony (F5)**, for a person who knowingly obtains or receives another's vehicle and knows the act was without authorization.

Finally, the bill creates the offense of **unauthorized use of a motor vehicle, a class 1 misdemeanor (M1)**, when a person obtains or exercises control over vehicle without owner authorization; did not commit a criminal offense, other than a misdemeanor traffic offense; and the motor vehicle is returned to the owner or recovered by law enforcement within 24 hours, with no damage to the motor vehicle.

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. Using Judicial Department and Denver County Court data, 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 reclassifies several offenses related to motor vehicle theft. From FY 2019-20 to FY 2021-22, 11,287 individuals have been convicted and sentenced for a motor vehicle theft offense. Of the persons convicted, 8,589 were male, 2,571 were female, and 127 did not have a gender identified. Demographically, 9,368 were White, 1,066 were Black/African American, 513 were Hispanic, 71 were Asian, 56 were American Indian, 72 were classified as "Other," and 141 did not have a race identified. Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

Assumptions

The fiscal note assumes that the circumstances around motor vehicle theft will not change under the bill and, therefore, will not impact total caseload. Instead, certain offenders will be convicted of higher level felonies and sentenced to the Department of Corrections (DOC) for longer periods of time.

To determine how overall length of stay changes, the fiscal note assumes that under the bill:

- current sentences to the DOC for an F3 will continue to be sentenced as an F3;
- current sentences to the DOC for an F4 will continue to be sentenced as an F4;
- 80 percent of current sentences to the DOC for an F5 will be sentenced as an F4 under the bill, and the remaining 20 percent of current sentences for an F5 will continue to be sentenced as an F5; and
- all current sentences to the DOC for an F6 will be sentenced as an F5 under the bill.

In short, the fiscal note assumes that those currently being sentenced for most F5s and all F6s will spend additional months in the DOC. The impact on the average daily state prison and parole populations is illustrated in Tables 2 and Table 3 below. 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.

Table 2
Impact on Average Daily State Prison Population Under SB 23-097

	5-Year Average New DOC Commits	Crime Class	ALOS (in months)	Year 1	Year 2	Year 3	Year 4	Year 5
Under Bill	85	F4	29.2	-	85.0	170.00	206.83	206.83
Current Law	85	F5	15.9	-	85.0	112.48	112.48	112.48
Average Daily Population Impact				-	-	57.52	94.35	94.35
Under Bill	98	F5	15.9	-	98.00	129.69	129.69	129.69
Current Law	98	F6	8.5	-	69.17	69.17	69.17	69.17
Average Daily Population Impact				-	28.83	60.52	60.52	60.52
Total				-	28.83	118.03	154.87	154.87

Table 3
Impact on Average Daily State Parole Population Under SB 23-097

	5-Year Average New DOC Commits	Crime Class	ALOS (in months)	Year 1	Year 2	Year 3	Year 4	Year 5
Under Bill	85	F4	24.1	-	-	0.00	48.17	133.17
Current Law	85	F5	18.6	-	-	57.52	131.61	131.61
Average Daily Population Impact				-	-	(57.52)	(83.44)	1.56
Under Bill	98	F5	18.6	-	-	66.31	151.74	151.74
Current Law	98	F6	9.9	-	28.83	80.77	80.77	80.77
Average Daily Population Impact				-	(28.83)	(14.46)	70.97	70.97
Total				-	(28.83)	(71.97)	(12.47)	72.53

State Revenue

Criminal fines and court fees. By modifying an existing felony offense, the bill increases state revenue from criminal fines and court fees by a minimal amount beginning in FY 2023-24, 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 3 felony ranges from \$3,000 to \$750,000; a class 4 felony ranges from \$2,000 to \$500,000; and a class 5 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.

Revocation fees. Starting in FY 2023-24, to the extent that additional individuals are sentenced for a felony instead of a misdemeanor, the number of felony revocations of driver licenses may increase. If this occurs, revenue to the Department of Revenue will increase as more individuals pay a reinstatement fee to get their license back. Revenue will depend on how many individuals will choose to pay the reinstatement fee, and cannot be determined at this time. For informational purposes, the reinstatement fee for a driver license is \$95. Reinstatement fee revenue is subject to TABOR.

State Expenditures

The bill increases state cash fund expenditures in the Department of Revenue by \$23,265 in FY 2023-24 only, and increases state General Fund expenditures by \$557,895 in FY 2024-25 in the Department of Corrections. The bill will also impact workload in the Judicial Department starting in FY 2023-24. Expenditures are shown in Table 4 and detailed below.

**Table 4
 Expenditures Under SB 23-097**

	FY 2023-24	FY 2024-25
Department of Revenue		
Computer Programming	\$24,409	-
DOR Subtotal	\$24,409	-
Department of Corrections		
Bed Impact	-	\$557,895
DOC Subtotal	-	\$557,895
Total	\$24,409	\$557,895

Department of Revenue

In FY 2023-24 only, the bill will increase state expenditures in the Department of Revenue by \$23,265 from the DRIVES Vehicle Services Account. The DOR will be required to update the Driver License, Record, Identification, and Vehicle Enterprise Solutions (DRIVES) system to revise motor vehicle violations since any conviction involving a motor vehicle related offense is posted to a driver’s record. Programming costs are calculated at 88 hours at a rate of \$238 per hour for a total of \$20,944. In addition, programming and testing within the innovation strategy and delivery team, which maintains the DRIVES system, will cost \$3,465, and be paid via invoice to the Office of Information Technology.

Department of Corrections

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.

Department of Corrections prison and parole costs (five-year fiscal impact). Based on the assumptions provided above, this bill increases prison operating costs for the DOC by a total of \$12.0 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. Table 5 shows the estimated cost of the bill over the next five fiscal years.

**Table 5
Prison and Parole Operating Costs Under SB 23-097**

Fiscal Year	Prison ADP Impact	Prison Cost	Parole ADP Impact	Parole Cost	Total Costs
FY 2023-24	-	-	-	-	-
FY 2024-25	28.83	\$781,284	(28.83)	(\$223,389)	\$557,895
FY 2025-26	118.03	\$3,198,806	(71.97)	(\$557,705)	\$2,641,101
FY 2026-27	154.87	\$4,197,035	(12.47)	(\$96,655)	\$4,100,380
FY 2027-28	154.87	\$4,197,035	72.53	\$562,006	\$4,759,041
Total Five-Year Cost					\$12,058,416

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 \$27.6 million 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

The bill increases workload in the trial courts and the Division of Probation within the Judicial Department as described below.

Trial courts. Starting in FY 2023-24, to the extent more cases are filed in district court instead of county court, trial court caseload will increase. Because most motor vehicle theft cases are already tried in district court, the fiscal note assumes that any increase in workload can be accomplished within existing appropriations.

Probation. Based on the sentencing assumptions outlined above, the fiscal note assumes that workload in the Probation Division will remain the same. If sentencing decisions shift toward more serious felonies for motor vehicle thefts, workload will decrease to the Probation Division as more individuals are sentenced to DOC instead of probation, and vice versa. In addition, workload will increase to the extent there are more pre-sentence investigation reports ordered due to the higher classification of crimes. If additional resources are required, they will be requested through the annual budget process.

Local Government

Beginning in FY 2023-24, this bill is expected to impact a variety of local government entities, 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. Similar to the Judicial Department, workload and costs for district attorneys may be impacted if cases become more or less complicated as a result of the bill.

County jails and Denver County Court. As outlined in the Assumptions section, the fiscal note assumes that most sentencing will occur at similar levels as current law, so any impact on county jails or the Denver County Court from shifting crime classification is expected to be minimal.

Effective Date

The bill was signed into law by the Governor on June 2, 2023, and it took effect July 1, 2023. The bill applies to offenses committed on or after July 1, 2023.

State Appropriations

For FY 2023-24, the bill requires and includes an appropriation of \$24,409 from the DRIVES Vehicle Services Account to the Department of Revenue.

State and Local Government Contacts

Corrections
Judicial
Transportation

District Attorneys
Public Safety

Information Technology
Revenue