



**Colorado
Legislative
Council
Staff**

Bill 2

FISCAL NOTE

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 18-0298
Prime Sponsor(s):

Date: October 31, 2017
Bill Status: Sentencing in the Criminal Justice System Interim Study Committee Bill Request

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BILL TOPIC: SECOND LOOK CRIMINAL SENTENCING

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue		
Cash Funds	Increase - see State Revenue section.	
State Expenditures	at least \$1,604,167	up to (\$2,041,609)
General Fund	1,129,256	(2,513,505)
Centrally Appropriated Costs	474,911	471,896
FTE Position Change	20.4 FTE	20.8 FTE
Appropriation Required: at least \$1.1 million - multiple agencies (FY 2018-19).		
Future Year Impacts: Ongoing increase in state revenue and net decrease in state expenditures.		

NOTE: While all agencies were canvassed for the fiscal note, not all agencies were able to respond with complete information. Therefore, this fiscal note should be considered preliminary. It will be updated if new information becomes available.

Summary of Legislation

Requested by the Sentencing in the Criminal Justice System Interim Study Committee, this bill creates a process for an offender who is not serving a life or death sentence to file a motion to the court for resentencing once he or she has served at least 15 years in the Department of Corrections (DOC) for the current offense.

Resentencing hearing process. The DOC must notify an offender at least 6 months prior to his or her resentencing hearing eligibility date. If the offender is indigent, counsel is to be appointed from the Office of the State Public Defender or, in the event of a conflict, the Office of the Alternate Defense Counsel. Once an offender files a motion for resentencing, the court must schedule a hearing within 182 days. The offender must prove by a preponderance of the evidence that a new sentence is consistent with the goals of state law. The offender and prosecution may present evidence that includes the offender's behavior and achievements in prison, as well as any other relevant evidence. The district attorney must notify the victim, who is entitled to submit a new victim impact statement and to testify at the hearing. If the court denies an offender's motion for resentencing, he or she may not refile for five years from the date of the court's denial.

Resentencing. If the court finds that the purposes of sentencing would be better served by imposing a new sentence, it may do so provided the new sentence is not longer than the original sentence. The court may impose a new sentence to the DOC, community corrections, or probation. If the court imposes a new sentence to the DOC, that sentence must be within the presumptive range that is in effect at the time of resentencing and the DOC must credit the new sentence with the time already served and recalculate the offender's parole eligibility and mandatory release dates.

Background and Assumptions

Data set. According to the DOC, there are currently about 814 offenders within the department's custody that meet the eligibility requirements for Bill 2. As of this writing, it is not known how many of these offenders are habitual offenders, sex offenders, serving consecutive sentences, or which felony classes these offenders are serving sentences for. For purposes of the fiscal note, this analysis assumes that the majority of these cases involve class 2 and class 3 felonies, or cases where the offender was sentenced to multiple, consecutive terms and that each case will be eligible for a resentencing hearing.

Assumptions. The fiscal note's costs are based on the following assumptions:

- The bill will be signed into law around June 1, 2018, and costs for most positions (except where noted) are shown as beginning July 1, 2018, to include the General Fund paydate shift;
- All 814 offenders are indigent and will qualify for state representation in each year for some period of time, after which the annual number of cases will be reduced (this rate is not currently known, and as such the fiscal note only shows two years of impact);
- Of the offenders receiving state representation, 757 will be represented by the Office of the State Public Defender and 57 will be represented by the Office of the Alternate Defense Counsel (this is a 7 percent conflict rate, which is consistent with current practice);
- DOC will be responsible for transporting offenders to court beginning in July 2018;
- Each resentencing hearing will average about four hours of court time;
- Motions will begin in July 2018, and resentencing will occur 6 months after the bill takes effect; resulting in savings for the DOC and increases in costs for Probation and Community Corrections beginning in January 2019;
- 10 percent of cases (81 offenders) will be resentenced to community corrections, which costs about \$45 per day;
- 2 percent of cases (16 offenders) will be resentenced to probation and pay a supervision fee of \$50 per month;
- A total of 97 offenders will be released from the DOC over the first two years, of which the first year is prorated to 43 due to the presumed timing of resentencing;
- Savings to the DOC for prison beds is about \$105 per day; and
- other sentencing reductions (for cases resentenced back to the DOC) will be addressed through the annual budget process.

State Revenue

Beginning in FY 2018-19, this bill is anticipated to increase state cash fund revenue by a minimal amount each year. Probationers pay a supervision fee of \$50 per month.

State Expenditures

This bill **increases state expenditures by at least \$1.6 million in FY 2018-19 and reduces state expenditures by up to \$2.0 million in FY 2019-20.** Expenditures are paid from the General Fund. FTE are increased by 20.4 FTE in FY 2018-19 and 20.8 FTE in FY 2019-20. Table 1 and the discussion that follows address the costs and savings under Bill 2.

Table 1. Expenditures Under Bill 2		
Cost Components	FY 2017-18	FY 2018-19
Judicial Department (trial courts and probation)	<u>\$938,562</u>	<u>\$812,942</u>
Personal Services	\$616,096	\$645,065
FTE	6.9 FTE	7.3 FTE
Operating Expenses and Capital Outlay Costs	170,427	16,070
Centrally Appropriated Costs*	152,039	151,807
Office of the State Public Defender	<u>\$1,041,645</u>	<u>\$982,426</u>
Personal Services	674,772	674,772
FTE	11.5 FTE	11.5 FTE
Operating Expenses and Capital Outlay Costs	68,691	12,255
Centrally Appropriated Costs*	298,182	295,399
Office of the Alternate Defense Counsel	TBD	TBD
Department of Corrections	<u>(\$769,160)</u>	<u>(\$5,430,202)</u>
Personal Services	90,369	90,369
FTE	2.0 FTE	2.0 FTE
Operating Expenses and Capital Outlay Costs	28,780	24,077
DOC prison bed savings	(912,999)	(5,569,338)
Centrally Appropriated Costs*	24,690	24,690
Department of Public Safety	<u>\$393,120</u>	<u>\$1,593,225</u>
Community corrections bed increase	393,120	1,593,225
TOTAL	<u>\$1,604,167</u>	<u>(\$2,041,609)</u>

* Centrally appropriated costs are not included in the bill's appropriation.

Judicial Department — trial courts. Trial courts will conduct hearings for approximately 814 offenders each year, with each hearing lasting about 4 hours on average. This results in the need to add 1.6 FTE district judge, which 1.6 FTE each for a division clerk, law clerk, and court reporter. Operating and capital outlay costs are included for each position.

Judicial Department — probation. Probation staff will be required to supervise approximately 16 offenders sentenced to probation, to conduct presentence investigations, and provide some supervision to offenders sentenced to community corrections. This requires a 0.9 FTE probation officer, prorated in the first year as this position is assumed to start in December 2018 to prepare as offenders are released from DOC in January 2019. Probation officer operating costs of \$2,655 per year are assumed, prorated in the first year due to the start date of the position.

Office of the State Public Defender. Costs are increased to provide representation to approximately 757 cases per year. Costs assume 7.0 FTE deputy state public defenders, 2.3 FTE investigators, 1.7 FTE administrative assistants, and 0.5 FTE central office support. Standard capital outlay and annual operating costs are assumed. In addition, annual attorney registration costs of \$190 per attorney are assumed.

Office of the Alternate Defense Counsel (OADC). The OADC will have costs to represent clients for which the OSPD has a conflict. Based on current trends, the fiscal note assumes a case increase of 57 clients per year for the first two years. Because it is not known which felony class these offenders are sentenced, for which the OADC funding model is based, the fiscal impact for Bill 2 has not been estimated. This analysis assumes that the OADC will request an increase in appropriations through the annual budget process once more information is available.

Department of Corrections — transportation. Costs are increased by 2.0 FTE to provide transport to court. In addition, increased fuel costs are assumed to be \$21,677, which represents a 5 percent increase from the department's current fuel budget. The fiscal note assumes that adjustments to these estimates may be made through the annual budget process once precise data are available.

Department of Corrections — prison beds. In FY 2018-19, the bill reduces prison beds by an estimated 48 offenders (one half of the assumed 97 offenders released, prorated to account for a January 2019 release date). Assuming these offenders are housed in a DOC facility rather than a private prison, costs are reduced by \$104.51 per day for 182 days, saving \$912,999. In the second year, FY 2019-20, a total of 146 prison beds are reduced (the other 49 offenders from the first year and the full 97 offenders from the second year). Assuming these offenders are housed similarly, costs are reduced by \$5,569,338. This calculation is based on prison bed vacancies rather than assuming a length of stay change due to lack of available data. Due to the number of prison bed vacancies, it is possible that FTE will also be reduced. It is also possible that a portion of these offenders will be reduced from private prison beds, which would result in fewer savings (private prison beds cost \$22,000 compared to the \$38,000 average for a DOC operated facility). As of this writing, these data were not available. Future adjustments will be addressed through the annual budget process.

Department of Public Safety — community corrections. In FY 2018-19, costs will increase by approximately \$393,120 (48 offenders * \$45 per day * 182 days). In FY 2019-20, costs will increase by approximately \$1,593,225 (97 offenders * \$45 per day * 365 days). It should be noted that these estimates assume everyone is sentenced at rolling intervals and will stay in community corrections for about one year), and the actual amount will depend on sentence date, any specialized treatment needs, and length of sentence imposed.

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. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes include health insurance, supplemental retirement insurance, leased space, and indirect cost recoveries where applicable.

Local Government Impact

This bill increases workload and costs for district attorneys to notify victims and participate in resentencing hearings. These impacts could be significant and are expected to vary widely by jurisdiction.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature. It applies to any offender who meets the eligibility criteria on or after the bill's effective date.

State Appropriations

For FY 2018-19, the bill requires the following adjustments in appropriations:

- The Judicial Department requires \$786,523 General Fund and an allocation of 6.9 FTE. Of this amount, \$34,727 and 0.5 FTE are for probation; \$751,796 and 6.4 FTE are for trial courts;
- The Office of the State Public Defender requires \$743,463 General Fund and an allocation of 11.5 FTE;
- The Department of Corrections requires a net decrease of \$793,850 General Fund and an allocation of 2.0 FTE; and
- The Department of Public Safety requires an appropriation of \$393,120 General Fund for allocation to community corrections programs.

State and Local Government Contacts

Corrections
Judicial

District Attorneys
Public Safety

Information Technology

