



**Colorado  
Legislative  
Council  
Staff**

**Bill 4**

**FISCAL NOTE**

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

**Drafting Number:** LLS 18-0300  
**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:** PAROLE 50 PERCENT NONVIOLENT CRIME 75 PERCENT VIOLENT CRIME

Fiscal Impact Summary	FY 2018-2019	FY 2019-2020	FY 2020-2021
<b>State Revenue</b>			
<b>State Expenditures</b>	<b><u>\$3.5 million</u></b>	<b><u>\$2.0 million</u></b>	<b><u>(\$6.47 million)</u></b>
General Fund	3.5 million	2.0 million	(6.49 million)
Centrally Appropriated Costs			0.02 million
<b>FTE Position Change</b>	28.7 FTE	43.0 FTE	43.9 FTE
<b>Appropriation Required:</b> \$3,492,825 - Department of Corrections (FY 2018-19).			
<b>Future Year Impacts:</b> State expenditure decrease through FY 2029-30; state expenditure increase beginning in FY 2030-31.			

**Summary of Legislation**

**Requested by the Sentencing in the Criminal Justice System Interim Study Committee**, this bill requires offenders who are sentenced to a period of incarceration for felony offenses committed on or after October 1, 2018, to serve a minimum percentage of their sentence before being released at their parole eligibility date. Offenders who commit offenses that are not crimes of violence are to be released on mandatory parole after serving a minimum of 50 percent of their sentence, depending on the amount of earned time credited against the offender's full sentence. Offenders who commit crimes of violence must be released on mandatory parole after serving a minimum of 75 percent of their sentence, depending on the amount of earned time credited. Releases are made automatically and are not at the discretion of the State Board of Parole. The board retains discretion for the release of sex offenders governed by indeterminate sentences and for revocations of parolees who have violated their terms of parole.

Earned time is calculated as follows:

- offenders may be awarded up to 16 days per month (8 days per month for offenders serving sentences for crimes of violence) for participation in work and training, group living, and/or counseling sessions, and for showing positive progress; and

- in addition to monthly earned time accruals, offenders may be awarded up to 60 days of earned time for achievement of a milestone in a particular program or for demonstration of exceptional conduct, up to a maximum of 120 days.

The bill requires the Department of Corrections (DOC) to conduct monthly reviews of an offender's performance record and accrued earned time. These reviews are conducted on an annual basis under current law.

The Division of Adult Parole in DOC may place an offender into a community corrections program up to one year prior to the offender's parole eligibility date. Offenders can continue to accrue earned time while in community corrections or while on parole.

Cost savings that result from the bill will be allocated in equal shares to issue grants for community-based victim services and for organizations that provide reentry services to offenders in the community. Grants are to be made by the Division of Criminal Justice (DCJ) in the Department of Public Safety (DPS).

The bill removes certain mandatory punitive sanctions for offenders in the community who test positive for the use of alcohol or controlled substances. The bill adds hearings to set the conditions of parole and early discharge recommendation hearings to the list of critical stages that victims have the right to witness.

## **Background**

Under current law, the independent State Board of Parole may release an incarcerated offender to parole at its discretion provided that the offender has reached his or her parole eligibility date and has not been disqualified for another reason. Parole eligibility dates are determined by reducing the offender's court-ordered prison sentence by any good time or earned time credited against the sentence. At a later mandatory parole date, corresponding to the end of an offender's prison sentence less any credited earned time, state law requires that all offenders be released to parole if not sentenced to life imprisonment. An exception applies for sex offenders sentenced to an indeterminate period of incarceration, who may or may not be released after serving their minimum sentence at the parole board's discretion.

## **State Expenditures**

The bill is expected to increase General Fund expenditures by \$3.5 million and 28.7 FTE in FY 2018-19 and \$2.0 million and 43.0 FTE in FY 2019-20. The bill is expected to decrease General Fund expenditures by \$6.5 million in FY 2020-21, while increasing state personnel by 43.9 FTE. Expenditures are summarized in Table 1 and described below. The bill is expected to reduce the state prison population through FY 2029-30 and increase the state prison population during FY 2030-31. Beginning in FY 2031-32, the bill is expected to increase state expenditures relative to current law.

<b>Table 1. State General Fund Expenditures Under Bill 4</b>			
<b>Cost Components</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
Personal Services	\$1,402,954	\$2,104,432	\$2,165,873
FTE	28.7 FTE	43.0 FTE	43.9 FTE
Operating Expenses and Capital Outlay Costs	1,187,339	51,600	58,918
Computer Systems	374,920		5,000
Private Prison Contracts		(1,213,853)	(13,001,385)
Parole Caseload Management		255,643	2,542,351
Grants to Offender and Victim Programs			958,210
Employee Insurance and Supplemental Retirement	363,987	545,569	545,569
Leased Space	163,625	224,712	231,453
Centrally Appropriated Costs*			21,858
<b>TOTAL</b>	<b>\$3,492,825</b>	<b>\$1,968,103</b>	<b>(\$6,472,153)</b>

\* Centrally appropriated costs are not included in the bill's appropriation clause. Legislative Council Staff assumes that costs that would otherwise be centrally appropriated will be included in the bill's appropriation clause if they are associated with a change in staff exceeding 20 FTE.

**Department of Corrections.** The bill will increase General Fund expenditures for the DOC in FY 2018-19 and FY 2019-20, decrease General Fund expenditures for the DOC between FY 2020-21 and FY 2030-31, and increase General Fund expenditures for the DOC in FY 2031-32 and subsequent fiscal years. Impacts to the DOC include those related to prison population, parole caseload, offender performance record reviews, and computer programming. These impacts are described below.

**Prison population.** General Fund expenditures for contract beds at private prison facilities will decrease by \$1,213,853 in FY 2019-20 and \$13,001,385 in FY 2020-21. The bill is expected to reduce the average daily prison population by 53.8 inmates in FY 2019-20 and 570.7 inmates in FY 2020-21. It is assumed that the state will accommodate these reductions by reducing private prison contracts, though population at state facilities could be reduced instead. Estimates reflect private prison contracts at a daily rate of \$60.47 in FY 2017-18, grown annually by 1.0 percent, the compound average annual growth rate in private prison contract costs between FY 2003-04 and FY 2015-16.

The bill is expected to reduce periods of incarceration for offenders who commit class 4, class 5, and class 6 felony crimes excluding crimes of violence, as well as all drug felony crimes, on and after October 1, 2018. Offenders in these categories currently serve more than 50 percent of their sentences in a prison facility. The bill is also expected to increase periods of incarceration for offenders who commit class 2 and class 3 felony crimes and all crimes of violence on and after October 1, 2018. Offenders convicted of class 2 and class 3 felonies currently serve less than 50 percent of their sentences in a prison facility, and offenders convicted of crimes of violence in all felony criminal classifications currently serve less than 75 percent of their sentences in prison.

Table 2 compares anticipated lengths of stay in prison for offenders in all affected criminal classes under current law and the bill. Current law estimates reflect the DCJ forecast for lengths of stay. Estimates under the bill reflect governing sentences handed down for offenders committed

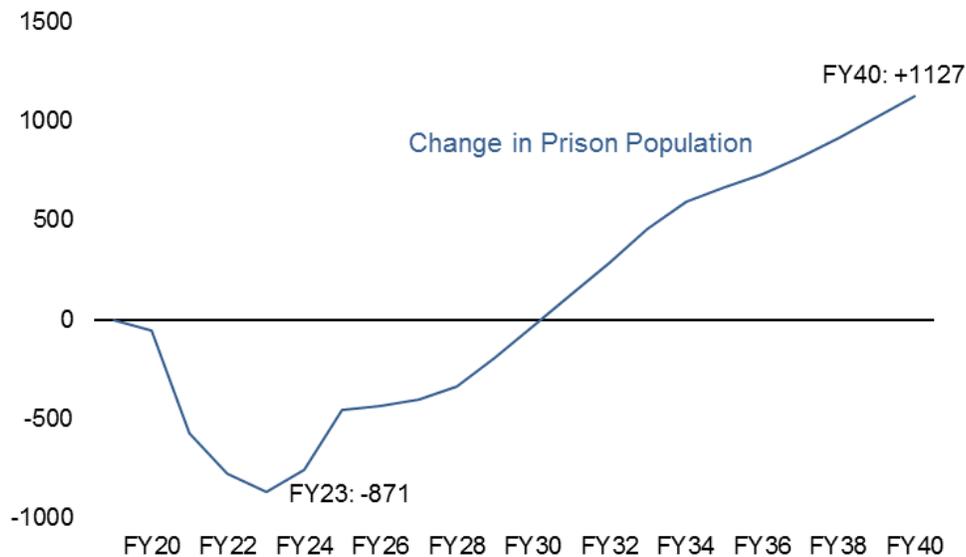
to DOC during FY 2015-16 and FY 2016-17 and assume that offenders will serve either 50 percent or 75 percent of their governing sentence depending on whether they were convicted of a crime of violence (COV). This analysis assumes no change in sentencing behavior as a result of the bill.

<b>Table 2. Projected Prison Lengths of Stay under Bill 4 Compared to Current Law</b>			
<b>Crime Classification</b>	<b>Average Projected Length of Stay (current law)</b>	<b>Average Projected Length of Stay (Bill 7)</b>	<b>Change</b>
Felony 2 - non-COV	83 months	175 months	93 months
Felony 2 - COV	209 months	477 months	269 months
Felony 3 - non-COV	56 months	66 months	10 months
Felony 3 - COV	103 months	284 months	180 months
Felony 4 - non-COV	32 months	30 months	(2 months)
Felony 4 - COV	49 months	84 months	35 months
Felony 5 - non-COV	19 months	16 months	(3 months)
Felony 5 - COV	27 months	37 months	10 months
Felony 6 - non-COV	10 months	9 months	(1 month)
Felony 6 - COV	14 months	22 months	8 months
Drug Felony 1	105 months	79 months	(25 months)
Drug Felony 2	41 months	37 months	(4 months)
Drug Felony 3	24 months	19 months	(5 months)
Drug Felony 4	7 months	6 months	(1 month)

Because the bill reduces prison lengths of stay for offenders convicted of lower level felonies but increases prison lengths of stay for offenders convicted of higher level felonies, it reduces the prison population relative to current law in the short term while increasing it relative to current law in the long term. The prison population is projected to be reduced through FY 2029-30, with the most significant decrease relative to current law, 871 offenders, occurring in FY 2022-23. The prison population is projected to increase relative to current law beginning in FY 2030-31, with the amount of the increase exceeding 1,000 offenders in FY 2038-39.

Figure 1 presents anticipated changes in the prison population under the bill relative to current law through FY 2039-40. The Legislative Council Staff forecast for new court commitments to DOC ends in FY 2018-19. For FY 2019-20 and subsequent years, Figure 1 assumes that new court commitments will grow by the State Demography Office projections for population growth under both current law and the bill. Prison lengths of stay under current law reflect DCJ projections. Figure 1 assumes that offenders will remain in prison for 50 percent or 75 percent of their governing sentence as required in the bill and that sentences will be consistent with those handed down in FY 2015-16 and FY 2016-17.

**Figure 1. Projected Change to State Prison Population through FY 2039-40 under Bill 4**  
*Average Daily Population*



Beginning in FY 2030-31, DOC will need to accommodate the increase in offenders. Depending on other trends in the prison population, existing prison capacity may be sufficient. If existing prison capacity is insufficient, the General Assembly may choose to appropriate funds for additional private prison beds or for the construction of a new state prison facility. These costs have not been estimated.

*Five-year fiscal impact on correctional facilities.* Current law prohibits the General Assembly from passing any bill to increase periods of imprisonment in state correctional facilities without appropriating an amount sufficient to cover the increased capital construction and operating costs in the bill in each of the first five fiscal years.

The prison population is expected to decrease in FY 2019-20 through FY 2029-30 as lengths of stay for offenders convicted of class 4 felonies, class 5 felonies, class 6 felonies, and all drug felonies are reduced. For this reason, the bill is not expected to increase the prison population during the five-year period for which appropriations are required.

Reductions to the state prison population through FY 2022-23 are shown in Table 3. In these years, the reduction in the prison population is assumed to be addressed through reduced private prison bed contracts rather than closure of DOC facilities, though other options exist. The state contracts for private prison beds at a cost of \$60.47 per offender per day, including a bed fee of \$56.80 per offender per day and medical costs of \$3.67 per offender per day. These costs are expected to increase at a rate of 1.0 percent per year consistent with the compound average annual rate of increase for these costs between FY 2003-04 and FY 2015-16.

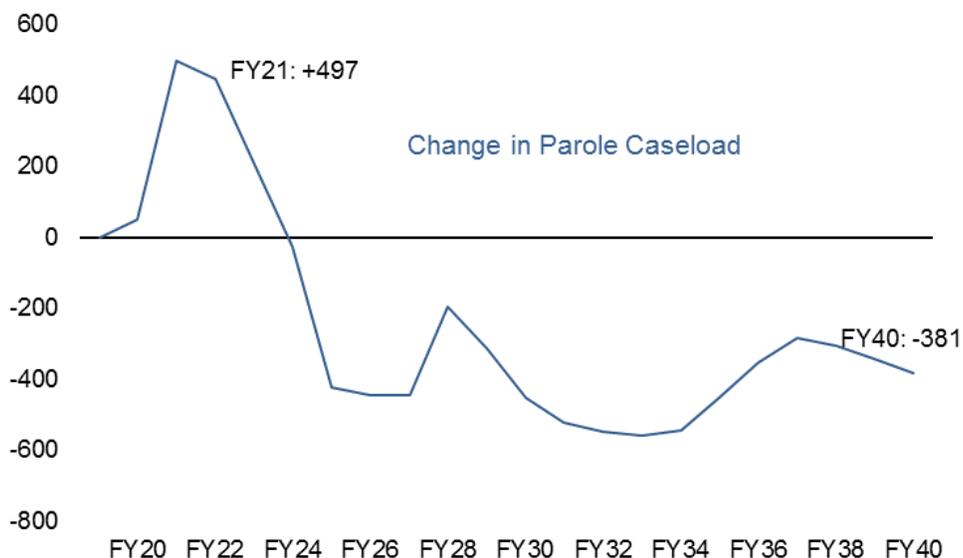
This bill is expected to increase the state prison population in FY 2030-31 and subsequent fiscal years as offenders convicted of class 2 felonies, class 3 felonies, and crimes of violence in all criminal classifications are required to remain in prison for longer periods of time than under current law.

<b>Fiscal Year</b>	<b>Inmate Bed Impact</b>	<b>Construction Cost</b>	<b>Operating Cost</b>	<b>Total Cost</b>
FY 2018-19	0	\$0	\$0	\$0
FY 2019-20	(53.8)	0	(1,213,853)	(1,213,853)
FY 2020-21	(570.7)	0	(13,001,385)	(13,001,385)
FY 2021-22	(776.7)	0	(17,878,623)	(17,878,623)
FY 2022-23	(870.7)	0	(20,250,867)	(20,250,867)
<b>Total</b>		<b>\$0</b>	<b>(\$52,344,728)</b>	<b>(\$52,344,728)</b>

*Parole caseload.* General Fund expenditures for administration of offenders on parole will increase by \$255,643 in FY 2018-19, when average daily parole caseload is expected to increase by 51.7 offenders, and by \$2,542,351 in FY 2019-20, when average daily parole caseload is expected to increase by 496.9 offenders. Costs assume the FY 2017-18 daily rate of \$12.67 per day and are grown annually by 3.4 percent, representing the compound average annual rate of increase in parole costs per offender per day between FY 1999-00 and FY 2015-16.

Impacts to parole caseload will result from changes to offenders' lengths of stay in prison. This analysis does not assume any change in the amount of time that offenders will spend on parole, as mandatory parole periods are set in statute. Relative to current law, parole caseload is expected to increase through FY 2022-23, with the most significant increase of 497 offenders occurring in FY 2020-21. Parole caseload is expected to decrease beginning in FY 2023-24 due to longer prison stays. Figure 2 shows projected parole caseload under the bill relative to current law. These projections incorporate the assumptions for releases from prison shown in Figure 1. They do not incorporate assumptions for any change in the pattern of parole revocations.

**Figure 2. Projected Change to State Parole Caseload through FY 2039-40 under Bill 4**  
*Average Daily Population*



*Performance record reviews.* General Fund expenditures for performance record reviews will increase by \$3,117,905 and 28.7 FTE in FY 2018-19, \$2,926,313 and 43.0 FTE in FY 2019-20, and similar amounts in subsequent fiscal years. These costs reflect the bill's requirement that performance record reviews be conducted on a monthly basis rather than annually as under current law. Under current law, 13 FTE staff in the DOC Office of Offender Services conduct 6,000 reviews per month, representing 462 reviews per staffperson per month or about 2.4 reports per offender per year. Requiring 12 reports per offender per year will increase office workload by 400 percent. Assuming that personnel can conduct 600 reviews per month as individual offenders are reviewed more frequently, the bill is expected to require the addition of 40 FTE technicians and 3 FTE administrative assistants. Because the increase in staff exceeds 20 FTE, employee benefit expenditures that would otherwise be centrally appropriated are included in the bill's appropriation. For FY 2018-19, personnel costs are prorated to reflect the bill's October 1 effective date and the General Fund pay date shift.

Current DOC facilities are insufficient to accommodate 43 new staff. The bill is expected to require the lease of 11,531 square feet of office space at a cost of \$18.92 per square foot per year. Leased space expenditures are shown in Table 1. For FY 2018-19 only, the DOC will require additional General Fund expenditures to renovate and build out leased space, including necessary security improvements. These costs are estimated at \$950,670 in FY 2018-19 and are included in the operating expenses and capital outlay line in Table 1.

*Programming costs.* One-time General Fund expenditures for computer programming will total \$374,920 in FY 2018-19, representing 3,640 hours of programming at a cost of \$103 per hour. An estimated 3,120 hours will be required to update the DOC time computation system to account for changes to good time, earned time, and minimum length of stay while retaining the system's current capacity to account for offenders sentenced before October 1, 2018. Additionally, an estimated 520 hours will be required to make changes to the community corrections referral system. These improvements will be completed by the Office of Information Technology and require a corresponding reappropriation.

*Parole sanctions.* The bill removes certain mandatory punitive sanctions for offenders in the community who test positive for the use of alcohol or controlled substances. This provision may reduce costs associated with imposing sanctions; the amount of the reduction is not estimated in this fiscal note.

***Parole Board.*** The bill eliminates Parole Board discretion in most application hearings for the release of offenders convicted of crimes that occur on and after October 1, 2018. Beginning in October 2019 under current law, the Board is expected to order discretionary releases of about 25 offenders per month who committed level 4 drug felony offenses in October 2018 and subsequent months. The number of discretionary releases of offenders sentenced for crimes committed on and after October 1, 2018, will increase through FY 2019-20 and in future years. Under the bill, the board will not have discretion in these cases, and its workload will decrease.

Beginning in FY 2020-21, the volume of the decrease may be sufficient to reduce board expenses. The number of Parole Board members is set in statute and is not reduced in this bill. The General Assembly may choose to reduce appropriations for Parole Board staff. For the current FY 2017-18, the board is appropriated 17.5 FTE, including seven board members and 10.5 FTE staff, as well as associated operating expenses and contract services.

The volume of the reduction in application hearings is expected to be partially offset by an increase in the number of revocation hearings. Parolees from Colorado facilities, including those in an out-of-state location, totaled 10,595 offenders on September 30, 2017. The bill is expected to increase parole caseload by an average daily population of 497 offenders in FY 2020-21.

**Department of Public Safety.** General Fund expenditures for the DPS will increase by \$73,759 and 0.9 FTE in FY 2020-21. Additionally, the department will be responsible for making nearly \$1.0 million in grants from the General Fund in equal shares to community-based victim services and community-based organizations that provide reentry services to offenders. The amounts to be granted are assumed to depend on cost savings from reduced prison population, less costs associated with additional parole caseload, in the prior FY 2019-20.

DPS expenditures reflect the addition of 1.0 FTE grant specialist IV to be shared between the Office of Victims Programs and the Office of Adult and Juvenile Justice Assistance, prorated to reflect the General Fund pay date shift. The amount of personal services required is sensitive to the amount of grants to be issued and may increase in FY 2021-22 and future fiscal years as the amounts of grant disbursements increase. Grant disbursements are expected to be required through FY 2030-31. DPS expenditures also include travel costs for this employee and the licensure of a \$5,000 grant management software system.

**Community corrections.** The bill potentially increases the number of offenders housed in the community corrections system. Offenders may be referred from prison to community corrections within 12 months of their parole eligibility date. Offenders must be approved by the local Community Corrections Board. The number of offenders who will be referred to community corrections under the bill is not estimated. The average cost of a community corrections bed is \$45 per offender per day.

**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 and summarized in Table 3. Table 3 includes centrally appropriated costs only for DPS. Because the bill is expected to add more than 20 staff to DOC, costs that would otherwise be centrally appropriated are included in the bill's appropriation.

<b>Table 3. Centrally Appropriated Costs Under Bill 4</b>			
<b>Cost Components</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
Employee Insurance			\$7,943
Supplemental Employee Retirement Payments			5,506
Indirect Costs			8,409
<b>TOTAL</b>	<b>\$0</b>	<b>\$0</b>	<b>\$21,858</b>

**Local Government Impact**

The bill minimally increases local government workload beginning in FY 2018-19. Community corrections boards will see an increased number of referred offenders which they can choose to accept or reject. Inmate beds in community corrections facilities are funded by the state.

## Technical Notes

**Period of incarceration.** The bill states that an offender, other than a sex offender sentenced to an indeterminate sentence, must be granted parole after the offender has served either 50 percent or 75 percent of his or her sentence, depending on whether the sentence is for a crime of violence. If this clause is interpreted to require the offender's release *when* the offender has served the applicable percentage of his or her sentence, then the bill's earned time requirements have no effect because they can neither shorten nor lengthen the offender's length of stay in prison. If this clause is interpreted to require that the offender be released *at any point after* serving the applicable percentage of his or her sentence, then lengths of stay will differ according to the amount of earned time that the offender accrues.

This fiscal note assumes that all offenders, other than offenders sentenced for class 1 felonies and sex offenders with indeterminate sentences, will be released when they have served either 50 percent or 75 percent of their sentence, either because the bill requires this or because they are assumed to have accrued sufficient earned time to warrant a release at this date.

**Cost savings.** The bill requires that cost savings generated be appropriated for grants in the following fiscal year. The bill does not specify who is to determine the cost savings, what costs shall be included, or the methodology for determining the savings. This fiscal note assumes that grants will be appropriated in an amount equal to the net impact on costs from the number of incarcerated offenders and state parolees during the prior fiscal year. Under this assumption, cost savings will first occur in FY 2019-20 and grants will first be made in FY 2020-21. If costs for administration are included, cost savings will first occur in FY 2020-21 and grants will first be made in FY 2021-22.

The bill's net impact on costs for prison population and parole caseload are expected to become positive in FY 2030-31. No grants will be issued in FY 2031-32 or any subsequent year.

## Effective Date

The bill takes effect October 1, 2018, and applies to offenses committed on or after that date.

## State Appropriations

For FY 2018-19, the bill requires a General Fund appropriation of \$3,492,825 to the Department of Corrections with an allocation of 28.7 FTE. From this amount, \$374,920 should be reappropriated to the Office of Information Technology.

## State and Local Government Contacts

Corrections  
Judicial

Information Technology  
Public Safety

