



**Colorado
Legislative
Council
Staff**

Bill 7

FISCAL NOTE

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

Drafting Number: LLS 18-0249
Prime Sponsor(s):

Date: October 19, 2017
Bill Status: County Courthouse and County Jail Funding and Overcrowding Solutions Interim Study Committee Bill Request

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BILL TOPIC: NONDISCRETIONARY PAROLE BASED ON RISK ASSESSMENT

Fiscal Impact Summary	FY 2018-2019	FY 2019-2020	FY 2020-2021
State Revenue			
State Expenditures	<u>\$338,547</u>	<u>(\$2,655,962)</u>	<u>(\$11,572,104)</u>
General Fund	338,547	(2,679,338)	(11,775,689)
Centrally Appropriated Costs		23,376	203,584
FTE Position Change		1.8 FTE	15.8 FTE
Appropriation Required: \$338,547 - Department of Corrections (FY 2018-19).			
Future Year Impacts: General Fund expenditure decrease through FY 2031-32; General Fund expenditure increase in FY 2032-33 and subsequent years.			

Summary of Legislation

This bill, *requested by the County Courthouse and County Jail Funding and Overcrowding Solutions Interim Study Committee*, makes changes to prison and parole sentences for offenders who commit crimes on and after July 1, 2018. Changes are described below.

Prison sentences. Offenders who are sentenced to a period of incarceration, other than those sentenced for a crime of violence, are required to serve at least 50 percent of their prison sentence unless their sentence is commuted by the Governor. As under current law, an offender's parole eligibility date is initially scheduled 50 percent of the way through the prison sentence, though this date can be delayed by the Department of Corrections (DOC) for inmate misconduct (reduction of good time). The DOC may deduct up to 10 days per month from the sentences of offenders who were not sentenced for a crime of violence and who make progress in certain areas (earned time). However, earned time may not reduce an offender's period of incarceration below 50 percent of his or her sentence.

Offenders who are sentenced to a period of incarceration for a crime of violence are required to serve at least 75 percent of their sentence unless their sentence is commuted by the Governor. An offender's parole eligibility date is initially scheduled 75 percent of the way through

the prison sentence, though this date can be delayed by DOC for inmate misconduct (reduction of good time). The DOC may deduct up to 5 days per month from the sentences of offenders who make progress in certain areas (earned time). However, earned time may not reduce an offender's period of incarceration below 75 percent of his or her sentence.

Parole applications. The bill requires that the Parole Board automatically release most offenders when they reach their parole eligibility date. The Board retains the ability to grant or not to grant parole in its judgement for offenders who were convicted of sex offenses.

Parole period. The bill repeals the requirement that offenders be sentenced to a mandatory period of parole based on the crime classification of their offense. Instead, the bill requires that offenders serve a mandatory period of parole based on their risk level as determined by the Colorado Actuarial Risk Assessment Scale (CARAS). Offenders with a "very low" or "low" CARAS score are required to serve a 1 year period of parole. Offenders with a "medium" CARAS score are required to serve an 18 month period of parole. Offenders with a "high" or "very high" CARAS score are required to serve a 2 year period of parole.

The DOC may deduct up to 5 days per month from the parole requirement of parolees who make progress in certain areas (earned time). The Parole Board retains discretion to continue, revoke, or modify parole for offenders who are found to have violated the conditions of their parole.

Community corrections. With approval of the Community Corrections Board, the DOC may place an offender in a community corrections program within 12 months of the offender's parole eligibility date. Offenders placed in community corrections may earn time toward the completion of their sentence, but the amount of time served in a correctional facility, including both prisons and community correction facilities, must equal at least 50 percent of the offender's sentence or 75 percent for offenders sentenced for crimes of violence.

Victims' rights. The bill adds hearings to set parole conditions or to consider an offender's early discharge to the list of critical stages which victims of crimes have the right to witness.

Background

Parole period. Under current law, offenders are sentenced to a period of parole based on the crime classification of their controlling sentence. Offenders sentenced for class 6 felonies or level 3 or level 4 drug felonies are sentenced to one year of parole upon release from prison. Offenders sentenced for class 5 felonies and level 2 drug felonies are sentenced to two years of parole upon release. Offenders sentenced for class 4 felonies or level 1 drug felonies are sentenced to three years of parole, and offenders sentenced for class 2 or class 3 felonies are sentenced to five years of parole. Offenders sentenced for class 1 felonies are sentenced to life imprisonment (or death) and do not serve a period of parole.

Colorado Actuarial Risk Assessment Scale. Current law requires the Division of Criminal Justice in the Department of Public Safety (DPS) to develop and verify a risk assessment protocol for parole releases. CARAS attempts to predict the likelihood that an offender will be rearrested or charged with a new crime upon release. The scale considers quantitative factors including an offender's arrest record, custody level, prior parole outcomes, age, and substance abuse screening. Information on the current Version 6 of CARAS can be found on the DPS website, here: http://cdpsdocs.state.co.us/ors/docs/Risks/CARAS-Ver6-Scale_2016-05-05.pdf

State Expenditures

The bill is expected to increase state General Fund expenditures by about \$0.4 million in FY 2018-19 and to reduce state expenditures by about \$2.7 million in FY 2019-20 and about \$11.6 million in FY 2020-21. Expenditures are expected to decrease through FY 2031-32 and rise beginning in FY 2032-33 when the bill contributes to an increase in the state inmate population. Expenditures through FY 2020-21 are summarized in Table 1.

Table 1. Expenditures Under Bill 7			
Cost Components	FY 2018-19	FY 2019-20	FY 2020-21
Personal Services		\$93,985	\$807,416
FTE		1.8 FTE	15.8 FTE
Operating Expenses and Capital Outlay Costs	\$9,641	237,826	1,710,650
Computer Programming	374,920		
Contracts for Private Prison Beds	(46,014)	(3,011,149)	(14,293,754)
Centrally Appropriated Costs*		23,376	203,584
TOTAL	\$338,547	(\$2,655,962)	(\$11,572,104)

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

Prison population. General Fund expenditures for contract beds at private prison facilities will decrease by \$46,014 in FY 2018-19, \$3,011,149 in FY 2019-20, and \$14,293,754 in FY 2020-21. The bill is expected to reduce the average daily prison population by 2.1 offenders in FY 2018-19, 136.3 offenders in FY 2019-20, and 647.2 offenders 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 \$56.80 per offender per day together with medical costs averaging \$3.67 per offender per day.

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 July 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 July 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.

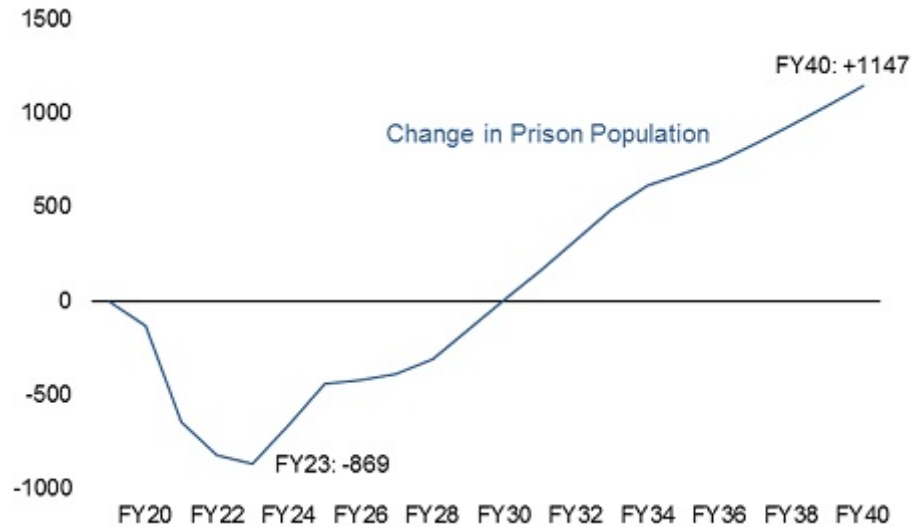
Table 2 shows anticipated lengths of stay in prison for offenders in all affected criminal classes under current law and the bill. Current law estimates reflect the Division of Criminal Justice forecast for lengths of stay. Estimates under the bill reflect governing sentences handed down for offenders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

Table 2. Projected Prison Lengths of Stay under Current Law and Bill 7			
Crime Classification	Average Projected Length of Stay (current law)	Average Projected Length of Stay (Bill 7)	Change
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 2028-29, with the most significant decrease relative to current law, 869 offenders, occurring in FY 2022-23. The prison population is projected to increase relative to current law beginning in FY 2029-30, with the amount of the increase exceeding 1000 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 Division of Criminal Justice 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 7
Average Daily Population



Beginning in FY 2029-30, 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.

This bill is expected to increase the state prison population in FY 2029-30 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. However, the prison population is expected to decrease in FY 2018-19 through FY 2028-29 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.

Impacts on 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.

Table 3. Five-Year Fiscal Impact on Correctional Facilities				
Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2018-19	(2.1)	\$0	(\$46,014)	(\$46,014)
FY 2019-20	(136.3)	0	(3,011,149)	(3,011,149)
FY 2020-21	(647.2)	0	(14,293,754)	(14,293,754)
FY 2021-22	(822.4)	0	(18,164,444)	(18,164,444)
FY 2022-23	(868.8)	0	(19,187,793)	(19,187,793)
Total		\$0	(\$54,703,154)	(\$54,703,154)

Parole caseload. General Fund expenditures for administration of offenders on parole will increase by \$9,641 in FY 2018-19, when average daily parole caseload is expected to increase by 2.1 offenders, reflecting a cost of \$12.67 per offender per day. The bill is expected to increase the average daily parole population by 148.1 offenders in FY 2019-20 and 1,028.2 offenders in FY 2020-21. These caseload increases are assumed to require additional staff in the Division of Adult Parole in the DOC. One parole officer is required for every 68.7 parolees who are not under intensive supervision and for every 22.8 parolees who are under intensive supervision. This fiscal note assumes that one parole officer will be required for every 60 parolees.

For FY 2019-20, the bill requires the addition of 2.0 FTE community parole officers. For FY 2020-21, the bill requires an additional 15.0 FTE community parole officers. These figures are prorated in the first year to reflect the General Fund pay date shift. Associated expenses include startup costs, including weapons and equipment in addition to regular capital outlay, and operating costs, including those for leased vehicles. In addition to staff expenses, contract costs for parolees are estimated to total \$148 per parolee per year for FY 2019-20 and future fiscal years.

Impacts on parole caseload will result from changes to offenders' length of stay in prison and changes to the amount of time they spend on parole. In general, the bill increases the average parole period for offenders sentenced for lower level felonies and decreases the average parole period for offenders sentenced for higher level felonies.

Table 4 shows anticipated parole periods for offenders in all affected criminal classes under current law and the bill. Current law estimates reflect the Division of Criminal Justice forecast for lengths of stay. Estimates under the bill reflect CARAS scores for released offenders in each crime classification during FY 2015-16 and FY 2016-17. Because offenders may only be sentenced under the drug felony statute for crimes committed on and after July 1, 2013, no drug felony 1 offenders have been released to date. It is assumed that the drug felony 1 offender population will most closely resemble felony 4 offenders convicted of crimes other than crimes of violence.

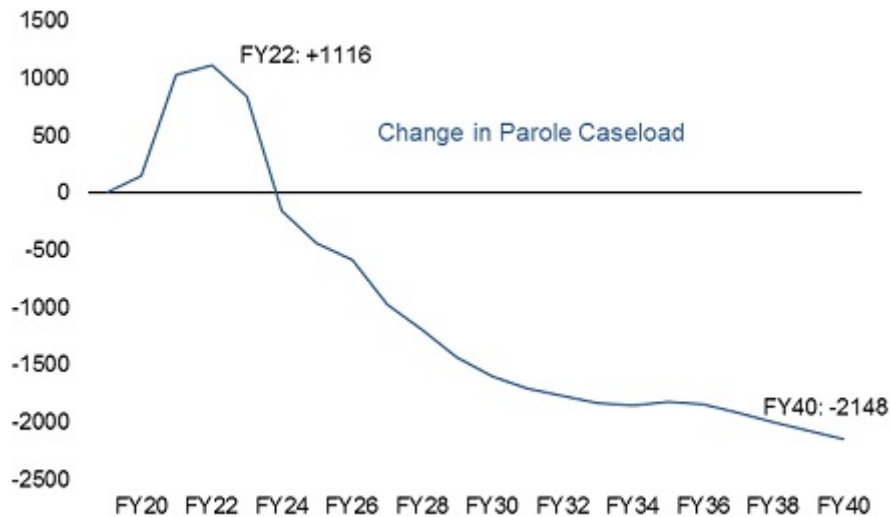
Table 4. Projected Average Parole Periods under Current Law and Bill 7			
Crime Classification	Average Projected Parole Period (current law)	Average Projected Parole Period (Bill 7)	Change
Felony 2 - non-COV	39 months	19 months	(20 months)
Felony 2 - COV	42 months	19 months	(23 months)
Felony 3 - non-COV	42 months	19 months	(23 months)
Felony 3 - COV	43 months	19 months	(24 months)
Felony 4 - non-COV	27 months	20 months	(7 months)
Felony 4 - COV	27 months	20 months	(7 months)
Felony 5 - non-COV	18 months	19 months	1 month
Felony 5 - COV	18 months	19 months	1 month
Felony 6 - non-COV	9 months	17 months	8 months
Felony 6 - COV	9 months	17 months	8 months
Drug Felony 1*	27 months	20 months	(7 months)
Drug Felony 2	18 months	19 months	1 month
Drug Felony 3	9 months	17 months	8 months
Drug Felony 4	9 months	17 months	8 months

* No data are available for Drug Felony 1 offenders. These offenders are assumed to behave like non-COV Felony 4 offenders.

Because parole periods are increased for low level felony offenders and reduced for high level felony offenders, the bill is expected to increase parole caseload in the short run while reducing parole caseload over a longer term. Relative to current law, parole caseload is expected to increase through FY 2022-23, with the most significant increase of 1,116 offenders occurring in FY 2021-22. Parole caseload is expected to decrease beginning in FY 2023-24.

Figure 2 shows projected parole caseload under the bill relative to current law. The projections in Figure 2 incorporate assumptions for releases from prison shown in Figure 1. Offender populations assumed to be released each month were segmented into groups of very low/low, medium, and high/very high CARAS scores with unique discharge dates. Figure 2 does 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 7
Average Daily Population



Programming costs. One-time General Fund expenses 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 July 1, 2018. Additionally, an estimated 520 hours will be required to make changes to the community corrections referral system.

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 July 1, 2018. Beginning in July 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 July 2018 and subsequent months. The number of discretionary releases of offenders sentenced for crimes committed on and after July 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 1,116 offenders in FY 2021-22.

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.

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 5.

Table 5. Centrally Appropriated Costs Under Bill 7			
Cost Components	FY 2018-19	FY 2019-20	FY 2020-21
Employee Insurance	\$0	\$14,954	\$131,235
Supplemental Employee Retirement Payments		8,422	72,349
TOTAL	\$0	\$23,376	\$203,584

Local Government Impact

The bill minimally increases local government expenditures 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.

Effective Date

The bill takes effect July 1, 2018, if no referendum petition is filed. It applies to offenses committed on and after July 1, 2018.

State Appropriations

For FY 2018-19, the bill requires a net increase of \$338,547 in General Fund appropriations, including \$374,920 for computer programming, \$9,641 for the Division of Adult Parole, and (\$46,014) for contracts with private prisons. From this amount, \$374,920 should be reappropriated to the Office of Information Technology.

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