



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number: LLS 23-1012
Prime Sponsors: Rep. Weissman; Soper

Date: April 17, 2023
Bill Status: House Judiciary
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Bill Topic: **FELONY SENTENCING COMMISSION RECOMMENDATIONS**

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input checked="" 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 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 an appropriation of \$50,690 to the Judicial Department.

Fiscal Note Status: The fiscal note reflects the introduced bill. Due to time constraints, this analysis is preliminary and will be updated following further review and any additional information received.

Table 1
State Fiscal Impacts Under HB 23-1293

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue	General and Cash Funds	(\$41,300)	(\$72,387)
	Total Revenue	(\$41,300)	(\$72,387)
Expenditures	General Fund	\$50,690	(\$754,902)
	Centrally Appropriated	\$9,908	\$24,778
	Total Expenditures	\$60,598	(\$730,124)
	Total FTE	0.6 FTE	1.4 FTE
Transfers		-	-
Other Budget Impacts	TABOR Refund	(\$41,300)	(\$72,387)
	General Fund Reserve	\$7,604	(\$113,235)

Summary of Legislation

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

**Table 2
 Felony Crimes with Increased Classification**

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

**Table 3
 Felony Crimes with Decreased Classification**

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

**Table 4
 Modified Crimes**

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

**Table 5
 Removal of Crimes¹**

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

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

**Table 6
 New Crimes Under Bill**

Crime	Classification Under Current Law
Aggravated retaliation against a witness or victim	F3

**Table 7
 Eliminated Mandatory Sentences**

Crime	Sentence Under Current Law
Second violation of identity theft	Sentence to the DOC for a term 2x the minimum presumptive range to 2x the maximum
Riots in detention facilities for active participation in a riot and does not employ a weapon	Punishment must be imprisonment in the DOC for 2 to 10 years
Vehicular eluding	Increase in minimum fine ranging from \$2,000 to \$6,000
Explosives or incendiary devices	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 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. 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 ¹	18-12-105.5 (1)	3
Total		23

¹ 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 ¹	18-5-903 (2)(b)	42
Possession of Ballistic Knife ²	18-12-102 (3)	2
Tax Evasion	39-21-118 (1)	3
Total		52

¹ 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.

² 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 is estimated to decrease by \$41,300 in FY 2023-24 and \$72,387 in FY 2024-25 and future fiscal years from a reduction of court and criminal fees. The biggest driver of the reduction of revenue is the reduced classification for possession of a financial device. On average, a felony 6 is assessed \$135 in various court fees and criminal fines and a class 2 misdemeanor are assessed \$72, resulting in a reduction of \$63 per offense. Revenue from court and criminal fees are subject to the state’s TABOR limit.

State Expenditures

The bill increases state expenditures by \$61,000 in FY 2023-24 and decreases state expenditures by \$730,000 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
Judicial Department		
Personal Services	\$41,625	\$99,900
Operating Expenses	\$1,865	\$3,730
Capital Outlay Costs	\$7,200	\$400
Centrally Appropriated Costs ¹	\$9,908	\$24,778
Personal Service – FTE	0.6 FTE	1.4 FTE
Judicial Subtotal	\$60,598	\$128,808
Department of Corrections		
Operating Costs (See Table 3 for detail)	-	(\$858,932)
DOC Subtotal	-	(\$858,932)
Total	\$60,598	(\$730,124)
Total FTE	0.6 FTE	1.4 FTE

¹ 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 \$61,000 in FY 2023-24 and \$129,000 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 1.4 FTE to supervise additional offenders sentenced to probation in lieu of the DOC. This includes 1.0 FTE probation officer and 0.4 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. An estimate on the cost to update crime information in this system is not available at this time.

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 \$6.6 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**

Fiscal Year	Prison ADP Impact	Prison Cost	Parole ADP Impact	Parole Cost	Total Costs
FY 2023-24	-	-	-	-	-
FY 2024-25	(27)	(\$729,001)	(17)	(\$129,931)	(\$858,932)
FY 2025-26	(22)	(\$587,713)	(71)	(\$547,834)	(\$1,135,547)
FY 2026-27	(20)	(\$536,221)	(158)	(\$1,224,371)	(\$1,760,592)
FY 2027-28	(17)	(\$472,985)	(302)	(\$2,337,200)	(\$2,810,184)
			Total		(\$6,565,254)

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 2.

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 takes effect October 1, 2023, and applies to offenses committed on or after that date.

State Appropriations

For FY 2023-24, the bill requires an appropriation of \$50,690 from the General Fund to the Judicial Department and 0.6 FTE

State and Local Government Contacts

Corrections

District Attorney

Judicial