

Colorado Legislative Council Staff Fiscal Note

**FINAL
FISCAL NOTE**

Drafting Number: LLS 11-0163
Prime Sponsor(s): Sen. Guzman
 Rep. Pabon

Date: August 11, 2011
Bill Status: Postponed Indefinitely
Fiscal Analyst: Jessika Shipley (303-866-3528)

TITLE: CONCERNING CRIMES AGAINST HOMELESS PERSONS.

Fiscal Impact Summary	FY 2011-2012	FY 2012-2013
State Revenue		
Cash Funds		
Fines Collection Cash Fund	less than \$5,000	less than \$5,000
State Transfers or Diversions		
Transfer from the General Fund to the Capital Construction Fund	(\$88,431)	(\$156,523)
State Expenditures		
General Fund		\$28,142
Cash Funds - Capital Construction Fund appropriation to the Corrections Expansion Reserve Fund	\$88,431	\$156,523
FTE Position Change		
Effective Date: The bill was postponed indefinitely by the House Judiciary Committee on May 3, 2011.		
Appropriation Summary for FY 2011-2012: See State Appropriations section.		
Local Government Impact: Minimal		

Summary of Legislation

An individual commits a bias-motivated crime if, with the intent to intimidate or harass another person because of that person's actual or perceived race, color, religion, ancestry, national origin, physical or mental disability, or sexual orientation, he or she bodily injures the other person, damages or destroys the property of the other person, or causes the other person to believe that bodily injury or property damage or destruction is imminent. This bill, which was postponed indefinitely by the House Judiciary Committee, would have added a victim's homeless status as one possible basis for committing a bias-motivated crime. Under current law, bias-motivated crimes may be a class 1 misdemeanor, a class 5 felony, or a class 4 felony, depending on the circumstances.

State Revenue

State law specifies that the fine penalty for the crimes affected by the bill is in the range of \$500 to \$500,000. Unless otherwise provided by law, the fines are to be deposited in the state Fines Collection Cash Fund for annual appropriations to cover associated administrative and personnel costs. All unexpended balances of the cash fund revert to the state General Fund at the end of each fiscal year. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to the cash fund and the General Fund cannot be determined.

State Transfers or Diversions

Pursuant to the requirements of state law, this bill transfers \$88,431 from the General Fund to the Capital Construction Fund in FY 2011-12, then appropriates the money to the Corrections Expansion Reserve Fund. Thus, this amount will not be available for General Fund appropriations. For a further explanation of this transfer and appropriation, see the section related to the five-year impact on correctional facilities.

State Expenditures

Department of Corrections (DOC). The DOC requires additional General Fund expenditures of \$88,431 in FY 2011-12 and \$184,665 in FY 2012-13. According to national data, assault crimes against the homeless in Colorado are generally rare. In 2010, there were three violent crimes committed against homeless victims. One was a murder and another was an attempted murder. Neither of those crimes would be affected by this bill. The third was a class 1 misdemeanor assault. Under the bill, that assault would become a class 5 felony with an average DOC sentence of 21.2 months. The fiscal note assumes that one new offender will be convicted of a class 5 felony each year.

Five-Year Fiscal Impact on Correctional Facilities

Section 2-2-703, C.R.S., specifies that no bill can be passed by the General Assembly which results in a net increase in periods of imprisonment in *state correctional* facilities unless it contains an appropriation of money sufficient to cover the increased capital construction costs and operating costs in each of the first five fiscal years of the bill. Sections 17-1-102, 104.9, and 105.5, C.R.S., authorize the department to permanently place inmates classified as medium custody and below in private contract prisons. Inmates classified higher than medium custody cannot be placed in private contract prisons, except under "correctional emergency" conditions. ***The fiscal note assumes that the new inmates identified in this bill will be allocated between state correctional facilities and private contract prisons according to historical patterns.***

If an inmate is placed in a state correctional facility, the additional construction costs are estimated to be \$130,046 per inmate bed. Operating costs are \$88.59 per bed per day or \$32,335 per bed per year. It should be noted that the construction costs reflect the funding needed to construct inmate beds in the fiscal year prior to when additional offenders are expected to enter the system. This lag accounts for the estimated time for criminal filing, trial, disposition, and sentencing. If an inmate is placed in a private contract prison, the state incurs no additional capital construction costs; however, the state pays a rate of \$52.69 per bed per day for inmates placed in private prisons. The total cost to the department is therefore \$19,232 per private prison bed per year. Departmental data indicates that 32 percent of class 5 felonies are housed in private prisons, and both the construction and operating costs presented in Table 1 have been prorated accordingly.

Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2011-12	0.0	\$88,431	\$0	\$88,431
FY 2012-13	1.0	\$156,523	\$28,142	\$184,665
FY 2013-14	1.8	\$0	\$49,812	\$49,812
FY 2014-15	1.8	\$0	\$49,812	\$49,812
FY 2015-16	1.8	\$0	\$49,812	\$49,812
Total		\$244,954	\$177,578	\$422,532

Judicial Branch. The branch may see an increase in the length of time spent on criminal assault trials because a lengthier potential sentence often provides an incentive to fight charges. Similarly, the probation caseload may be increased slightly, although it is likely that the probation departments are already seeing these offenders as regular assault cases. Any increase to the workloads of the trial courts or probation services will be absorbed within existing resources.

Local Government Impact

The penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$72 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails a daily rate of \$50.44 to house state inmates. It is assumed that the impact of any new misdemeanor convictions will be minimal and will not create the need for additional county jail space.

State Appropriations

The Senate Appropriations Committee added a section to the bill indicating that it will result in a minor fiscal impact. The amended bill states that because of the relative insignificance of this degree of fiscal impact, these amendments to the law are an exception to the five-year appropriation requirements specified in Section 2-2-703, C.R.S.

The bill continues to require a transfer of \$88,431 from the General Fund to the Capital Construction Fund and an appropriation of the same amount to the Corrections Expansion Reserve Fund. The bill also requires appropriations to the Department of Corrections from FY 2012-13 through FY 2015-16 as detailed in Table 1.

Departments Contacted

Corrections

Judicial