



**Colorado
Legislative
Council
Staff**

SB16-102

FISCAL NOTE

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

Drafting Number: LLS 16-0938
Prime Sponsor(s): Sen. Kerr

Date: February 5, 2016
Bill Status: Senate Judiciary
Fiscal Analyst: Kerry White (303-866-3469)

BILL TOPIC: REPEAL CERTAIN MANDATORY MINIMUM PRISON SENTENCES

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue		
Cash Funds	at least \$5,000	at least \$5,000
State Expenditures	<u>at least (\$1,171,196)</u>	<u>at least (\$1,513,993)</u>
General Fund	(1,180,432)	(1,523,472)
Centrally Appropriated Costs	9,236	9,479
TABOR Impact	at least \$5,000	at least \$5,000
FTE Position Change	0.9 FTE	0.9 FTE
Appropriation Required: \$65,788 - Judicial Department (FY 2016-17); (\$7,579,529) - Department of Corrections (FY 2016-17 through FY 2020-21).		
Future Year Impacts: Ongoing state revenue increase and net state expenditure decrease.		

NOTE: While all agencies were canvassed for this fiscal note, not all agencies had a chance 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

This bill removes the mandatory term of incarceration that must accompany convictions of certain types of second degree assault or violations of bail bond conditions.

Background

Second degree assault. Under current law, second degree assault is a class 3 (while committing certain other felonies), class 4 (most cases), class 5 (attempted) or class 6 felony (when the act is committed in the sudden heat of passion). Class 4 felonies are not sentenced as crimes of violence.

Bail bond condition violations. Under current law, a violation of bail bond conditions related to a prior felony results in a new class 6 felony conviction and a mandatory term in prison of not less than one year. Offenses related to a prior misdemeanor result in a new class 3 misdemeanor and a mandatory term in jail of not less than six months. Table 1, below, provides demographic information about each crime affected by the bill.

Table 1. Offenses Under SB16-102	
Offense	Total Convictions Over 3 Years
Felony bail bond violations (Class 6 felony)	218 convictions, including 19 females (2 Indian, 17 Caucasian) and 199 males (3 Asian, 18 African American, 10 Hispanic, 3 Indian, 4 Other, 161 Caucasian)
Misdemeanor bail bond violations (Class 3 misdemeanor)	310 convictions, including 3 unspecified, 58 females (1 Asian, 4 African American, 1 Hispanic, 11 Indian, 1 Other, 40 Caucasian) and 249 males (1 Asian, 10 African American, 21 Hispanic, 27 Indian, 1 Other, 189 Caucasian)
Second degree assault (Class 3 felony)*	4 convictions, including 1 unspecified and 3 males (1 African American, 2 Caucasian)
Second degree assault (Class 5 felony)*	363 convictions, including 36 females (1 Asian, 1 Hispanic, 7 African American, 27 Caucasian) and 327 males (1 Asian, 49 African American, 27 Hispanic, 3 Indian, 2 Other, and 245 Caucasian)
Second degree assault (Class 6 felony)*	105 convictions, including 1 unspecified, 16 female (4 African American, 2 Hispanic, 10 Caucasian) and 88 males (9 African American, 6 Hispanic, 3 Indian, 2 Other, 68 Caucasian)

* Except for certain circumstances, most of these crimes are sentenced as a crime of violence and subject to at least the midpoint and up to twice the maximum, as modified by the extraordinary risk crime statute, for the presumptive range. Most of these offenders are subject to a mandatory minimum term of incarceration as specified in the sentence range.

Assumptions

The assumptions about changes in sentences used in this fiscal note are shown in Table 2.

Table 2. Assumptions About Changes in Sentencing Under SB16-102			
Offense	Average Annual Convictions	Assumed Change in Sentencing	Resulting Impact Shown in Fiscal Note
Felony bail bond violations (Class 6 felony)	70	25 percent will receive fines, probation, jail or other sentence	Reduction in 18 persons sentenced to 12.1 months in prison each year; increase in probation revenue and workload; possible increase in county jail costs and fine revenue
Misdemeanor bail bond violations (Class 3 misdemeanor)	310	90 percent will receive fines, probation, or other sentence	Reduction in 279 persons sentenced to 6 months in jail each year; increase in probation revenue and workload; possible increase in fine revenue

Table 2. Assumptions About Changes in Sentencing Under SB16-102 (Cont.)			
Offense	Average Annual Convictions	Assumed Change in Sentencing	Resulting Impact Shown in Fiscal Note
Second degree assault (Class 3 felony)	1	All cases will continue to be sentenced to prison	None
Second degree assault (Class 5 felony)	120	25 percent will receive fines, probation, jail, or other sentence	Reduction in 30 persons sentenced to 21.7 months in prison each year; increase in probation revenue and workload; possible increases in county jail costs and fine revenue
Second degree assault (Class 6 felony)	35	25 percent will receive fines, probation, jail, or other sentence	Reduction in 9 persons sentenced to 12.1 months in prison each year; increase in probation revenue and workload; possible increase in county jail costs and fine revenue

State Revenue

Beginning in FY 2016-17, this bill is anticipated to increase state cash fund revenue by at least \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. By removing the requirement that a person convicted of certain types of second degree assault or bail bond conditions be sentenced to a mandatory term of incarceration, increased fines or sentences to probation may occur. The fine penalty for a class 5 or 6 felony is \$1,000 to \$100,000. The fine penalty for a class 3 misdemeanor is \$50 to \$750. In addition, persons on probation pay a fee of \$50 per month.

TABOR Impact

This bill is expected increase state revenue from criminal fines and probation fees, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund.

State Expenditures

Overall, beginning in FY 2016-17, this bill is anticipated to reduce state General Fund expenditures for the Department of Corrections and increase costs and FTE for the Judicial Department. **For FY 2016-17, the net reduction in expenditures is \$1,171,196 and an increase of 0.9 FTE and for FY 2017-18, the net reduction in expenditures is \$1,513,993 and an increase of 0.9 FTE.**

General assumptions. Calculations assume that the bill will take effect by June 1, 2016, and both increases and decreases in costs are effective as of July 1, 2016 (including the General Fund pay date shift for additional FTE).

Judicial Department. This bill will reduce expenditures and workload for the trial courts and agencies that provide representation to indigent defendants, including the Office of the State Public Defender and the Office of the Alternate Defense Counsel. By removing the mandatory term of incarceration, this analysis assumes that fewer felony cases will go to trial and more plea agreements will be reached.

Based on the assumptions listed above in Table 2, workload for probation services within the Judicial Department will increase under the bill. Table 3 shows the increase in costs for the Judicial Department to supervise additional offenders under the bill. Costs assume that at least 50 percent of offenders not being sent to prison will receive a sentence that includes probation. This results in approximately 30 to 35 offenders per year being sentenced to probation and requiring varying levels of supervision based on their individual risk assessment profiles.

Cost Components	FY 2016-17	FY 2017-18
Personal Services	\$60,230	\$60,230
FTE	0.9 FTE	0.9 FTE
Operating Expenses and Capital Outlay Costs	5,558	855
Centrally Appropriated Costs*	9,236	9,479
TOTAL	\$75,024	\$70,564

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

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 4.

Cost Components	FY 2016-17	FY 2017-18
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$4,082	\$4,082
Supplemental Employee Retirement Payments	5,154	5,397
TOTAL	\$9,236	\$9,479

Department of Corrections. This bill will reduce costs for the Department of Corrections. Based on the assumptions listed in Table 2, above, the fiscal note assumes that fewer people will be sentenced to a term of incarceration, which will reduce incarceration costs. Offenders placed in a private contract prison cost the state about \$59.90 per offender per day, including the current daily rate of \$56.02 and an estimated \$3.88 per offender per day for medical care provided by the DOC. Because the bill applies to any pending cases that are sentenced after the bill takes effect, an impact is expected in the first year. Table 5 shows the estimated savings of the bill over the next five fiscal years.

Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2016-17	(57.0)	\$0	(\$1,246,220)	(\$1,246,220)
FY 2017-18	(72.5)	\$0	(\$1,584,557)	(\$1,584,557)
FY 2018-19	(72.4)	\$0	(\$1,582,917)	(\$1,582,917)
FY 2019-20	(72.4)	\$0	(\$1,582,917)	(\$1,582,917)
FY 2020-21	(72.4)	\$0	(\$1,582,917)	(\$1,582,917)
Total				(\$7,579,529)

Local Government Impact

This bill will affect local governments in several ways. First, as discussed above, removing the mandatory term of incarceration may result in fewer cases going to trial, which would reduce workload and costs for district attorneys.

County jail savings. It is assumed that fewer people will be sentenced to jail if they are convicted of a class 3 misdemeanor for violating bail bond conditions. Based on the assumptions listed in Table 2, the bed reduction is estimated at 140 jail beds (279 beds each used for 6 months). However, to the extent that the other crimes affected by this bill include a term in county jail (rather than prison), costs will increase. The cost to house an offender in county jails varies from about \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$52.74 to house state inmates.

Denver County Court. The bill is expected to result in a reduction in workload for the Denver County Court, managed and funded by the City and County of Denver. As with felony cases, this analysis assumes that by removing the mandatory term of incarceration for convictions of a class 3 misdemeanor for violating bail bond conditions, some cases are likely to result in other sentencing options, such as fines or probation. To the extent that this occurs, revenue and workload for probation services in the Denver County Courts are expected to increase to supervise persons convicted under the bill. These impacts have not been estimated.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

The bill requires a reduction in appropriations of \$7,579,529 General Fund for the Department of Corrections for FY 2016-17 through FY 2020-21. It also requires an increase in appropriations of \$65,788 General Fund and an allocation of 0.9 FTE to the Judicial Department.

State and Local Government Contacts

Corrections District Attorneys Judicial Information Technology