

Colorado Legislative Council Staff Fiscal Note
**STATE and LOCAL
 FISCAL IMPACT**

Drafting Number: LLS 09-0153
Prime Sponsor(s): Rep. May
 Sen. Harvey

Date: January 21, 2009
Bill Status: House Judiciary
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TITLE: CONCERNING A PROHIBITION ON ACCEPTING A PLEA OF GUILTY FROM AN ILLEGAL ALIEN THAT WILL RESULT IN AVOIDING REMOVAL FROM THIS COUNTRY.

Fiscal Impact Summary	FY 2009-2010	FY 2010-2011
State Revenue	\$0	\$0
State Transfers or Diversions Transfer from the General Fund to the Capital Construction Fund	(\$1,957,034)	(\$1,944,945)
State Expenditures Cash Funds - Capital Construction Fund Appropriation to the Corrections Expansion Reserve Fund	\$1,957,034	\$1,944,945
FTE Position Change	0.0 FTE	0.0 FTE
Effective Date: Upon signature of the Governor or upon the bill becoming law without his signature.		
Appropriation Summary for FY 2009-2010: See State Appropriations section of fiscal note		
Local Government Impact: See Local Government Impact section		

Summary of Legislation

This bill prohibits a trial judge from accepting a plea of guilty to any charge if the defendant is in the country illegally, and the plea is a result of a plea offer that will allow the defendant to avoid removal from the country. It provides an exception in cases where the prosecuting attorney could not prove the original charges if brought to trial, and the plea offer is not intended to allow the defendant to avoid removal from the country.

Transfers or Diversions

Pursuant to the requirements of Section 2-2-703, C.R.S., and Section 17-1-116, C.R.S., this bill transfers \$1,957,034 from the General Fund to the Capital Construction Fund in FY 2009-10, 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. This bill is expected to increase expenditures for the department by \$7,859,132 through FY 2013-14. These costs are the result of an increase in the number of illegal aliens going to prison because they cannot plea down the case and avoid deportation. The expenditures in this fiscal note are based on an increase of 17 individuals per year into the state prisons using the following assumptions with data from 2007:

- 46,830 people were charged with at least one class 4, 5, or 6 felony and the case was filed in court (most individuals who plea down from a felony to a misdemeanor are non-violent offenders; therefore, the higher felony classes were not used in this analysis);
- of those, 8,835 people were charged with a felony, but pled down or were convicted of a misdemeanor;
- of these, it is estimated that 5.6 percent or 495 would be illegal aliens;
- approximately 35 percent of people charged with felonies are sentenced to the Department of Corrections with the remainder going to Probation and Community Corrections;
- therefore, 171 illegal aliens would be sentenced to the department; and
- assuming that most plea agreements are the result of an attorney being unable to establish a case for the original charge, it is estimated that 10 percent, or 17, of those individuals would have used a plea agreement to avoid deportation.

Judicial Branch: This bill requires the court to make certain determinations about a proposed plea agreement, including:

- the motivation for reaching such an agreement;
- the factual basis for the criminal charges; and
- the defendant's legal status.

These new requirements will affect the way judges rule on all plea agreements. Currently, judges do not necessarily know why a plea is offered and accepted. The court would be required to make a finding as to the factual basis of a plea in any case where the defendant is in the United States illegally. Judges will be required to first determine if the defendant is in violation of federal immigration law and then whether the plea agreement would result in the defendant avoiding deportation. This will require new training for judges and magistrates regarding immigration law. It is expected that any new training will be minimal and absorbed within existing resources.

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 \$150,773 per inmate bed. Operating costs are \$83.25 per bed per day or \$30,386 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 private prisons at a rate of \$54.93 per bed per day and the department incurs other costs of \$4.36 per bed per day for inmates placed in private prisons. The total cost to the department is therefore \$21,637 per private prison bed per year. Departmental data indicates that 22 percent of class 6 felony inmates, 24 percent of class five felony inmates, and 24 percent of class four felony inmates are housed in private prisons. Both the construction and operating costs presented in Table 1 have been prorated accordingly.

Prison bed construction is funded through a General Fund transfer to the Capital Construction Fund, which is then appropriated to the Corrections Expansion Reserve Fund. These appropriations are not subject to the 6 percent statutory General Fund appropriations limit. Money transferred to the Corrections Expansion Reserve Fund is typically appropriated each year for a variety of capital projects requested by the Department of Corrections; money is not held indefinitely for the construction of a new prison. General Fund appropriations for operating costs are subject to the 6 percent limit.

Table 1. Five-Year Fiscal Impact On Correctional Facilities				
Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2009-10	17.0	\$1,957,034	\$0	\$1,957,034
FY 2010-11	12.8	1,463,554	481,391	1,944,945
FY 2011-12	8.0	916,700	842,622	1,759,322
FY 2012-13	0.4	48,127	1,068,912	1,117,039
FY 2013-14	0.0	0	1,080,792	1,080,792
Total		\$4,385,415	\$3,473,717	\$7,859,132

General Fund Appropriations Impact. Based on the December 2008 Legislative Council Staff revenue forecast, revenue collections for FY 2009-10 will be insufficient to fully fund the 6 percent spending limit. Therefore, the increased funding required by this bill will further reduce the amount of money available for General Fund appropriations in the state's operating budget. For FY 2009-10, this amount is \$1,957,034.

Local Government Impact

This bill is expected to result in new admissions to state correctional facilities. To the extent that these facilities are unable to accommodate all of the new inmates, county jails may receive the overflow.

State Appropriations

For FY 2009-10, the bill requires a General Fund transfer of \$1,957,034 to the Capital Construction Fund and an appropriation of the same amount to the Corrections Expansion Reserve Fund. The bill also requires capital construction and operating costs in the Department of Corrections for the period from FY 2010-11 to FY 2013-14. These costs are identified in Table 1.

Departments Contacted

Judicial Law Public Safety Corrections