

Colorado Legislative Council Staff Fiscal Note

STATE
FISCAL IMPACT

This fiscal note is prepared pursuant to Joint Rule 22(b)(2).

Drafting Number: LLS 10-0913
Prime Sponsor(s): Rep. McCann

Date: March 7, 2010
Bill Status: House Judiciary
Fiscal Analyst: Jessika Shipley (303-866-3528)

TITLE: CONCERNING THE ELIGIBILITY FOR PROBATION OF A PERSON WHO HAS TWO OR MORE FELONY CONVICTIONS.

Fiscal Impact Summary	FY 2010-2011	FY 2011-2012
State Revenue		
State Expenditures		
General Fund	(\$2,320,441)	(\$3,728,215)
FTE Position Change	5.2 FTE	5.2 FTE
Effective Date: Upon signature of the Governor, or upon becoming law without his signature.		
Appropriation Summary for FY 2010-2011: See State Appropriations section.		
Local Government Impact: None.		

Summary of Legislation

Current law prohibits a defendant from applying to the court for probation if he or she has two or more prior felony convictions. With Amendment L.002, this bill allows individuals with two or more felony convictions that occur after the effective date of the bill to apply for probation with certain exceptions. A defendant may not apply for probation if the current or a prior conviction is for one of the following offenses:

- first or second degree murder;
- manslaughter;
- first or second degree assault;
- first or second degree kidnapping;
- a sex offense;
- first degree arson;
- first or second degree burglary;
- robbery or aggravated robbery;
- theft from the person of another;
- any felony offense committed against a child; or
- criminal attempt or conspiracy to commit any of the offenses listed above.

Currently, the sentencing court may waive the prohibition and grant probation on a case-by-case basis upon the recommendation of the district attorney. The bill does not change that provision.

State Expenditures

Judicial Department. The department will incur additional expenditures of **\$308,628 and 5.2 FTE in FY 2010-11 and \$305,162 and 5.2 FTE each year thereafter.** The entire impact to the department will be in the area of probation services. The fiscal note assumes that 90 individuals each year will be sentenced to probation that are currently being sentenced to the Department of Corrections. Due to the multiple prior felony convictions, approximately 80 percent, or 72, of those individuals will require supervision in an intensive probation program. The rest (18) will require supervision on regular probation at the maximum risk level. The costs to the department are outlined in Table 1.

Cost Components	FY 2010-11	FY 2011-12
Personal Services	\$275,204	\$300,222
FTE	5.2	5.2
Operating Expenses and Capital Outlay	\$29,224	\$4,940
Safety Equipment	\$4,200	\$0
TOTAL	\$308,628	\$305,162

Department of Corrections (DOC). The department will realize a **General Fund savings of \$2,629,069 in FY 2010-11 and \$4,033,377 in FY 2011-12.** The bill allows approximately 90 offenders each year to be sentenced to probation instead of the DOC. As a result, the department's operating costs will be reduced according to a prorated formula that reflects the percentage of total offenders housed in state facilities and in private prisons. The bill applies to class 2 through class 6 felonies. As no specific information was available as to the number of offenders in each felony class that will be eligible for probation under the bill, the fiscal note makes the assumption detailed in Table 2.

Felony Class	Percentage	# of Offenders
2	2	2
3	5	4.5
4	20	18
5	30	27
6	43	38.5
Total	100	90

Five-Year Fiscal Impact on Correctional Facilities

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.*

Operating costs for state correctional facilities are \$88.60 per bed per day or \$32,339 per bed per year. The state pays a rate of \$61.19 per bed per day for inmates placed in private prisons. The total cost to the department is therefore \$22,334 per private prison bed per year. Departmental data indicates that 19 percent of class 2 felonies, 27 percent of class 3 felonies, 29 percent of class 4 felonies, 32 percent of class 5 felonies, and 33 percent of class 6 felonies are housed in private prisons, and the operating costs presented in Table 3 have been prorated accordingly. It is important to note that the bed impact number decreases each year because the average length of stay for every felony class is more than 12 months. As such, regardless of the felony class of the offense, some or all of the savings from any given year carry over into the following year.

Fiscal Year	Inmate Bed Impact	Total Operating Cost
FY 2010-11	(90.0)	(\$2,629,069)
FY 2011-12	(137.8)	(\$4,033,377)
FY 2012-13	(162.1)	(\$4,751,132)
FY 2013-14	(169.1)	(\$4,960,198)
FY 2014-15	(176.1)	(\$5,169,267)
Total		(\$21,543,043)

Expenditures Not Included

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 summarized in Table 4.

Cost Components	FY 2010-11	FY 2011-12
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$36,920	\$36,920
Supplemental Employee Retirement Payments	10,234	13,585
TOTAL	\$47,154	\$50,505

*More information is available at: <http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536133924>

State Appropriations

For FY 2010-11, the Judicial Department will require a General Fund appropriation of \$308,628 and 5.2 FTE. The Department of Corrections will require a negative General Fund appropriation of \$2,629,069, plus the other five-year savings detailed in Table 3.

Departments Contacted

Corrections

Judicial