


Colorado Legislative Council Staff Fiscal Note
STATE
FISCAL IMPACT

Drafting Number: LLS 12-0817
Prime Sponsor(s): Rep. Gardner B.
 Sen. Carroll

Date: March 5, 2012
Bill Status: House Judiciary
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TITLE: CONCERNING CHANGES TO STATUTORY PROVISIONS RELATED TO CRIMINAL PROCEEDINGS.

Fiscal Impact Summary	Current FY 2011-2012	FY 2012-2013	FY 2013-2014
State Revenue			
Cash Funds			
Interstate Compact Probation Transfer Cash Fund	\$31,300	\$187,500	\$187,500
State Expenditures	See State Expenditures section.		
FTE Position Change			
Effective Date: Upon signature of the Governor, or upon becoming law without his signature.			
Appropriation Summary for FY 2012-2013: None required.			
Local Government Impact: None.			

Note: While all agencies were canvassed for the purposes of the fiscal note, not all agencies responded. Therefore, this analysis should be considered preliminary. The fiscal note will be revised if new information becomes available.

Summary of Legislation

This omnibus bill addresses several areas of statute governing criminal proceedings. Among other things, the bill:

Sentencing

- modifies the length of time a case may be continued following a defendant's plea of guilty for the purposes of entering judgment and sentencing to four years for a felony or two years for a misdemeanor, petty offense, or traffic offense;
- clarifies that deferred sentencing begins on the date the court continues the case, not the date that the defendant enters his or her plea;
- repeals the authority of a court to convert a determinate sentence to an indeterminate sentence for certain crimes related to child prostitution and child pornography;
- eliminates a requirement that the court make specific findings and on the record when the sentencing of a juvenile deviates from placement report recommendations; and

- removes a requirement to sentence certain persons to probation for second, third, or subsequent DUI offenses and instead allows, if a defendant is sentenced to the Department of Corrections, the defendant to complete court-ordered programs and treatment while on parole.

Court proceedings

- allows labels listing contents of commercially packaged items as evidence;
- if requested by any party, it requires the court to impanel at least one alternate juror to sit in a case for a class 1, 2, or 3 felony;
- removes the right of a grand jury witness to consult with the public defender's office and instead allows the individual to request that the court appoint an attorney to consult with or represent the witness; and
- requires a bond agent to indicate in writing whether the surety consents to the continuance of bond through sentencing of the defendant.

Sex offenses

- allows sex-offender evaluations up to two years old to be included in a presentence report and excludes certain misdemeanor offenses from the requirement to include a sex-offender evaluation unless ordered by the court; and
- permits an additional extension of up to two years for a deferred sentence for a sex offense when good cause is shown.

Probation

- specifies that, for the purposes of eligibility for probation, a conviction means a verdict or plea of guilty or nolo contendere and does not include a plea to a deferred judgment and sentence unless it is revoked;
- requires a probationer who wishes to transfer his or her probation to another state to pay a \$100 filing fee, credited to Interstate Compact Probation Transfer Cash Fund; and
- clarifies that the court cannot charge a probationer for the costs of returning the probationer to Colorado.

Miscellaneous

- clarifies the definition of earnings for purposes of garnishment, permits the court to use a collections investigator, and prioritizes the collection of court costs, fines, and restitution over most other orders;
- allows a collections investigator to issue an attachment of earnings;
- specifies record-sealing rights of a person convicted of minor in possession of alcohol; and
- expands the data to be included in the Judicial Department's annual report.

State Revenue

Beginning in the current FY 2011-12, this bill is anticipated to increase state cash fund revenue by \$187,500 per year. Revenue is generated by a new \$100 filing fee for an estimated 2,500 offenders applying for out-of-state probation supervision for each year and is based on an assumption that approximately 25 percent of these offenders will be indigent and have their fee waived. The fiscal note assumes that the bill will take effect by May 1, 2012, and shows a prorated increase in revenue of \$31,300 for the current FY 2011-12.

State Expenditures

Overall, this bill is anticipated to have a minimal impact on state expenditures. As discussed below, it will reduce state expenditures in some areas and increase state expenditures in other areas. It should be noted that many of the bill's provisions are procedural or process-oriented and will not affect state expenditures.

Reductions in the Judicial Department. Minimal savings are expected as a result of provisions that do the following:

- require a surety to consent to the continuance of bond through sentencing of the defendant;
- make sex offender evaluations in certain cases discretionary and extend the period of presentence;
- allow a collections investigator to issue an attachment of earnings without first going to the clerk; and
- prohibit the court from sentencing a person who has prior convictions for driving while impaired to probation if the person was previously sentenced to the Department of Corrections.

Reductions in the Office of the State Public Defender. The bill removes the right of a grand jury witness to consult with the public defender's office and instead allows the individual to request that the court appoint an attorney to consult with or represent the witness. As of this writing, no information about the number of grand jury witnesses that consult with a public defender's office was available and, therefore, no savings have been estimated.

Increases in the Judicial Department. Costs may increase by a minimal amount as a result of provisions that require a judge to impanel alternate jurors upon request and expand the data to be included in the Judicial Department's annual report. These costs are expected to be minimal, and any unanticipated increase in costs will be addressed through the annual budget process.

Potential increase in the Department of Corrections. The bill may increase costs for the Department of Corrections (DOC) in two ways. First, the bill removes a requirement to sentence certain persons to probation for second, third, or subsequent DUI offenses and instead allows, if a defendant is sentenced to the DOC, the defendant to complete court-ordered programs and treatment

while on parole. To the extent that this occurs, the length of time and cost for offenders to complete treatment while on parole could increase. As of this writing, no information about the number of offenders that this could apply to was available and, therefore, this cost has not been estimated.

Second, the bill repeals the authority of a court to convert a determinate sentence to an indeterminate sentence for certain crimes related to child prostitution and child pornography. Since 2010, a total of 88 offenders convicted of at least one count of the child sex crimes affected by the bill have been released from custody, including three that received indeterminate life sentences. Offenders with indeterminate sentences were released from custody after serving 54 percent of their sentences. By contrast, the 85 other offenders were released from custody after serving 56 percent of their sentences. By requiring determinate sentences for all offenders, this bill may increase the length of time certain offenders remain in prison by a small amount. These costs are minimal and are not anticipated to require an increase in appropriations.

Departments Contacted

Colorado District Attorney's Council
Judicial

Corrections
Law