

**STATE and LOCAL  
FISCAL IMPACT**

**Drafting Number:** LLS 15-1023  
**Prime Sponsor(s):** Rep. Melton

**Date:** March 31, 2015  
**Bill Status:** House Judiciary  
**Fiscal Analyst:** Kerry White (303-866-3469)

**BILL TOPIC:** SENTENCING FOR CERTAIN 2ND DEGREE ASSAULTS

<b>Fiscal Impact Summary*</b>	<b>FY 2015-2016</b>	<b>FY 2016-2017</b>
<b>State Revenue</b>		
<b>State Expenditures</b>	Decrease - see State Expenditures section.	
<b>FTE Position Change</b>		
<b>Appropriation Required:</b> None.		

\* This summary shows changes from current law under the bill for each fiscal year.

**Summary of Legislation**

This bill removes the mandatory sentencing as a crime of violence for second degree assault committed against a person who the defendant knew or reasonably should have known that the victim is a peace officer, firefighter, or emergency medical service provider. Under the bill, this crime is not necessarily a crime of violence.

**Background**

Under current law, second degree assault is a class 3 (while committing certain other felonies), class 4 (most cases), or class 6 felony (when the act is committed in the sudden heat of passion). It is a crime of violence and subject to mandatory, enhanced prison sentencing if, while committing the act:

- with intent to cause bodily injury to another person, he or she causes such injury to any person by means of a deadly weapon;
- with intent to prevent one whom he or she knows, or should know, to be a peace officer, firefighter, or emergency medical service provider from performing a lawful duty, he or she intentionally causes bodily injury to any person;
- and recklessly causes serious bodily injury to another person by means of a deadly weapon; or
- with intent to cause bodily injury to another person, he causes serious bodily injury to that person or another while incarcerated.

Courts have interpreted deadly weapons to include fists, knives, and guns, among others. A class 4 felony may be penalized with a term of incarceration of two to six years. A class 4 felony sentenced as a crime of violence is subject to at least the midpoint and up to twice the maximum, as modified by the extraordinary risk crime statute, for the presumptive range. This results in a mandatory minimum sentence of at least 5 years and up to 16 years in the custody of the Department of Corrections (DOC).

## **State Expenditures**

Overall, this bill is anticipated to reduce workload and costs for Judicial Department agencies and costs for the Department of Corrections by an indeterminate amount.

**Judicial Department agencies.** If cases involving second degree assault against peace officers, firefighters, or emergency medical service personnel are not charged as crimes of violence, court workload is expected to decrease because the cases are likely to settle sooner without the possibility of mandatory incarceration. For cases involving indigent defendants, this will also reduce costs and workload for the Office of the State Public Defender or the Office of the Alternate Defense Counsel. To the extent that a person is given a sentence to probation rather than the DOC, workload will increase for the Probation Division. Because it is not known how these cases will be charged after HB15-1303 becomes law, no reduction in appropriations is estimated. The fiscal note assumes that any required adjustments can be addressed through the annual budget process.

**Department of Corrections.** If a person is convicted of a class 4 felony without a crime of violence, he or she could be sentenced to probation or other correctional programs in lieu of incarceration, or be given a lesser prison sentence, which will reduce costs for the DOC. For informational purposes, offenders placed in a private contract prison cost the state about \$60.46 per offender per day, including the current daily rate of \$55.08 and an estimated \$5.38 per offender per day for medical care provided by the DOC. No impact is expected in the first year because of the estimated time for criminal filing, trial, disposition, and sentencing. The fiscal note assumes that any reductions in costs in future years arising under HB15-1303 will be addressed through the annual budget process.

## **Local Government Impact**

Similar to the trial courts, the bill could reduce workload for district attorneys to prosecute cases as class 4 felonies if those cases do not include sentencing as a crime of violence because those cases are more likely to be settled prior to trial.

## **Comparable Crime**

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. Between January 1, 2012, and December 31, 2014, there were 569 cases that involved at least one conviction of second degree assault against a peace officer, firefighter, or emergency medical service provider. Of this number, 415 were male, 151 were female, and 3 were unspecified. One offender was Asian, 52 were Black, 54 were Hispanic, 10 were American Indian, 442 were white, and 10 were unspecified or listed as other.

## **Effective Date**

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

**State and Local Government Contacts**

Corrections

District Attorneys

Judicial