

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 15-0353 **Date:** March 6, 2015
Prime Sponsor(s): Rep. McCann **Bill Status:** House Judiciary
 Sen. Martinez Humenik **Fiscal Analyst:** Kerry White (303-866-3469)

BILL TOPIC: RETALIATION AGAINST A PROSECUTOR

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue	<\$5,000	<\$5,000
Cash Funds	<\$5,000	<\$5,000
State Expenditures		At least \$22,068
General Fund	Workload increase	At least \$22,068
TABOR Set-Aside	<\$5,000	<\$5,000
FTE Position Change		
Appropriation Required: \$71,279 - Department of Corrections (FY 2015-16 to FY 2019-20).		

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

Summary of Legislation

This bill creates a new class 4 felony offense for the crime of retaliation against a prosecutor. The bill defines retaliation as threatening or committing an act of harassment, harm, or injury to a person or property in retaliation against a prosecutor acting in his or her professional capacity. Under the bill, the crime may be charged for threats or acts committed against the prosecutor, or other persons with a close relationship to, residing in the same household as, or related to the prosecutor.

State Revenue

Beginning in FY 2015-16, this bill is anticipated to increase state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a class 4 felony is \$2,000 to \$500,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, based on the low number of fines imposed in 2014, the fiscal note assumes that any revenue generated is likely to be less than \$5,000.

TABOR Impact

This bill may increase state revenue from fines, which will increase the amount of revenue required to be refunded under TABOR. TABOR refunds are paid from the General Fund.

State Expenditures

This bill is expected to increase workload for the Judicial Department in FY 2015-16 and state expenditures by at least \$22,068 in FY 2016-17.

Assumptions. The fiscal note assumes that the majority of cases that meet the criteria of this bill are charged under existing laws based on the offending behavior (i.e. harassment, assault, or stalking). It is assumed that one offender every five years will be convicted of a class 4 felony and be incarcerated in the Department of Corrections (DOC) as either a new offense, a consecutive sentence to another charge, or instead of a lesser charge. This assumption is based on the sentencing behavior for the similar class 4 felony crime of retaliation against a judge. Should the actual number of offenses exceed expectations, the Judicial Department or DOC can request additional appropriations through the annual budget process.

Five-Year Fiscal Impact on Correctional Facilities

This bill is anticipated to increase state General Fund expenditures by an estimated \$22,068 per year beginning in FY 2016-17 for the DOC. This increase assumes one offender will be convicted of a class 4 felony every five years and have an average length of stay of 38.8 months.

Current law prohibits the General Assembly from passing any bill to increase periods of imprisonment in state correctional facilities without appropriating an amount sufficient to cover the increased capital construction and operating costs of the bill in each of the first five fiscal years. However, current law also allows the DOC to place offenders classified as medium custody and below in private contract prisons, for which no state capital construction costs are incurred.

Offenders sentenced under this bill to DOC may be placed in either a state-run or a private contract prison, depending on several factors. Any offenders that *must* be housed in a state-run prison will likely require a shift of other inmates in that facility to private contract prisons. Therefore, this fiscal note assumes that the impact of this bill will be accommodated through the use of private contract prisons, and that no new capital construction funds are necessary.

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. Table 1 shows the estimated cost of the bill over the next five fiscal years.

Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2015-16	0.0	\$0	\$0	\$0
FY 2016-17	1.0	\$0	\$22,068	\$22,068
FY 2017-18	1.0	\$0	\$22,068	\$22,068
FY 2018-19	1.0	\$0	\$22,068	\$22,068
FY 2019-20	0.2	\$0	\$5,076	\$5,076
Total			\$71,279	\$71,279

Judicial Department. To the extent that this bill increases filings, workload will increase for district courts in the Judicial Department. The bill may also increase workload or costs for the Office of the State Public Defender and Office of Alternate Defense Counsel, to provide representation for any persons deemed to be indigent. To the extent that a person is charged with retaliation against a prosecutor instead of a lower level offense or is incarcerated rather than given probation, workload for the Probation Division will decrease. The fiscal note assumes the changes in workload are minimal and will not require a change in appropriations for any agency within the Judicial Department.

Local Government Impact

To the extent that a person is charged with retaliation against a prosecutor instead of a misdemeanor offense, costs for local governments will decrease. 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. The bill may also result in a decrease in revenue and workload for the Denver County Court, managed and funded by the City and County of Denver. It is assumed that the impact of this bill on local governments will be minimal.

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. The behavior prohibited under this bill is comparable to the crime of retaliation against a judge. Between January 1, 2010, and January 1, 2015, there were four convictions of retaliation against a judge (class 4 felony) and six convictions of attempted retaliation against a judge (class 5 felony). Of the persons convicted, one was a female and nine were males. Two offenders were African American and eight offenders were Caucasian. No data on the gender or minority status of victims are available.

Effective Date

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

State Appropriations

The bill requires the five-year appropriations of \$71,279 General Fund to the Department of Corrections as shown in Table 1 above.

State and Local Government Contacts

Corrections

District Attorneys

Judicial