

Colorado Legislative Council Staff

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 05-0440
Prime Sponsor(s): Rep. Carroll T.
 Sen. Grossman

Date: January 17, 2005
Bill Status: House Judiciary
Fiscal Analyst: John Evermann (303-866-4976)

TITLE: CONCERNING SUBSTANTIVE CHANGES TO STRENGTHEN THE STATE CRIMINAL LAW.

Fiscal Impact Summary	FY 2005/06	FY 2007-08
State Revenues		
General Fund - Misdemeanor Revenue	< \$5,000	< \$5,000
Cash Fund - Fines Collection Cash Fund	< 5,000	< 5,000
State Expenditures		
General Fund		\$26,247
General Fund to Correction Expansion Reserve Fund	\$83,360	
FTE Position Change	0.0 FTE	0.0 FTE
Other State Impact: TABOR		
Effective Date: July 1, 2005		
Appropriation Summary for FY 2005/2006: Five-year appropriation for prison bed construction and operation costs of \$188,348.		
Local Government Impact: See Local Government Impact section of fiscal note.		

Summary of Legislation

This bill revises various sections of criminal statutes. These revisions:

- modify the definition of restitution to include costs incurred as a result of drug-lab clean-up;
- modify the definition of falsely completing a written statement in the fraud statutes;
- add a class 1 misdemeanor for threats to cause death or bodily injury with a deadly weapon against staff, faculty, or students of educational institutions; and
- add two drugs to schedule I narcotics.

State Revenues

Section 4: Class 1 Misdemeanor. A threat to cause death or injury with a deadly weapon to staff, faculty, or students of an educational institution is a class 1 misdemeanor. Per Section 18-1.3-501, C.R.S., the penalty for a class 1 misdemeanor is six to 18 months imprisonment in county jail or a fine of \$500 to \$5,000, or both. Fine revenue not otherwise appropriated is deposited into the General Fund. Because the courts have the discretion of incarceration or imposing a fine, the impact to the state General Fund cannot be determined. However, this fiscal note anticipates the state to receive a minimal amount of fine revenue (less than \$5,000 per year) due to the passage of this bill.

This fine revenue will count toward the state's constitutional revenue limit and any potential refund of excess revenue under the terms of TABOR.

Section 5: Schedule I Controlled Substances. Controlled substances are listed in Colorado statutes on schedule I, II, III, IV, or V to parallel federal controlled substance schedules. This bill maintains conformity by adding two new substances to Schedule I. Distribution, manufacture, or sale of a Schedule I controlled substance is a class 3 felony and a class 2 felony for a subsequent conviction. The fiscal note assumes that there will be one class 3 felony conviction every five years.

Per Section 18-1.3-401 (III) (A), C.R.S., the fine penalty for a class 2 felony is \$5,000 to \$1.0 million and the penalty for a class 3 felony is \$3,000 to \$750,000. Unless otherwise provided by law, the fines are to be deposited in the state Fines Collection Cash Fund for annual appropriations by the General Assembly to cover associated administrative and personnel costs in the Judicial Branch related to the fines. All unexpended balances of the cash fund revert to the state General Fund at the end of each fiscal year. Because the courts have the discretion of incarceration or imposing a fine, the impact to the cash fund and the General Fund cannot be determined.

State Expenditures

Section 5 - Judicial, minimal impact. The fiscal note assumes that probation caseloads will increase as a result of the addition of two new substances to Schedule I. However, this increase will be minimal and absorbable within existing resources.

Section 5 - Department of Corrections, Five-Year Impact of \$188,348 GF. The fiscal note assumes that new substances being added to Schedule I will result in one new prison admission every five years for distribution, manufacture, or sale of one of the new substances. These are punished as a class 3 felony. The fiscal note assumes that there will not be any second-time offenders within a five-year period. The average length of stay for a drug related class 3 felony is 46.4 months.

Per Section 18-1.3-401 (V) (A), C.R.S., the sentence for a class 3 felony is imprisonment of 4 to 12 years and a mandatory parole of 5 years. The sentence for a class 2 felony is imprisonment of 8 to 24 years and a mandatory parole of 5 years. The confinement is to be served in a state correctional facility.

Five-Year Fiscal Impact on Correctional Facilities

The adoption of this bill will result in a net increase in periods of imprisonment in a state correctional facility. Section 2-2-703, C.R.S., requires that such bills cannot be passed without five years of appropriations for prison bed construction and operating costs. Construction costs are estimated to be \$83,360 per inmate bed. Operating costs are \$71.91 per bed per day, or \$26,247 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 sentence.

However, in the event state correctional facilities are at capacity, Sections 17-1-102, 104.9, and 105.5, C.R.S., authorize the Department of Corrections to permanently place state inmates classified as medium custody and below in private contract prisons. The state pays private prisons at a rate of \$49.56 per bed per day or \$18,098 per bed per year. Including administration and overhead, the state's total cost to incarcerate in a private contract prison is \$54.37 per bed per day, or \$19,845 per bed per year.

Five-Year Fiscal Impact on State Correctional Facilities				
Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2005-06	0.0	\$83,360	\$0	\$83,360
FY 2006-07	1.0	\$0	\$26,247	\$26,247
FY 2007-08	0.0	\$0	\$26,247	\$26,247
FY 2008-09	0.0	\$0	\$26,247	\$26,247
FY 2009-10	0.0	\$0	\$26,247	\$26,247
Total		\$83,360	\$104,988	\$188,348

Local Government Impact

Section 4: Class 1 Misdemeanor. The penalty for a class 1 misdemeanor is six to 18 months imprisonment in a county jail or a fine of \$500 to \$5,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. It is assumed that the impact of these new misdemeanors will be minimal and will not create the need for additional jail space at the county level.

State Appropriations

The Department of Corrections will require a General Fund appropriation to the Corrections Expansion Reserve Fund for construction costs in the amounts of \$83,360 for FY 2005-06.

The Department will also require a General Fund appropriation for operating costs in the amounts of \$26,247 for FY 2006-07 through FY 2009-10.

Departments Contacted

Corrections Revenue	Judicial Alternate Defense Counsel	Public Safety	Education	Public Defender
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