



Colorado Legislative Council Staff
**STATE and LOCAL
 FISCAL IMPACT**

Drafting Number: LLS 06B-2046
Prime Sponsor(s): Rep. Cadman

Date: July 6, 2006
Bill Status: House SVMA
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TITLE: CONCERNING CRIMINALIZING TRESPASSING IN THE STATE WHILE IN VIOLATION OF FEDERAL IMMIGRATION LAW.

Fiscal Impact Summary	FY 2006/07	FY 2007/08
State Revenues		
Cash Funds - Fines Collection Cash Fund	Increase	Increase
State Expenditures		
General Fund		\$435,970
FTE Position Change	0.0 FTE	0.0 FTE
Effective Date: The bill is effective upon signature of the Governor.		
Appropriation Summary for FY 2006/07: None		
Appropriation Summary for FY 2007/08: Department of Corrections: \$435,970 General Fund for capital construction costs		
Local Government Impact: See Local Government Impact section of the fiscal note.		

Summary of Legislation

The bill creates the offense of trespassing by illegal aliens making it against the law for a person who is in violation of federal immigration law to enter or be on any public or private land in Colorado. The bill specifies punishments to include the following:

- for a first offense - a misdemeanor with a fine of \$500;
- for a second offense - a class 1 misdemeanor with a fine of \$500 to \$5,000 and/or 6 to 18 months in county jail; and
- for a third or subsequent offense - a class 4 felony with a fine of \$2,000 to \$500,000 and/or 2 to 6 years in prison.

Background

While there are an estimated 225,000 to 275,000 illegal aliens in Colorado, it is difficult to determine how many people may be charged with this offense, found guilty, pay the fines, and/or serve jail or prison time based on the following:

- defendants to this offense may flee the state rather than appear in court and pay the penalties;
- the degree to which law enforcement issue citations, make arrests, and prosecute persons for violation of this offense will vary among localities;
- the degree to which the federal government will respond and intervene in these cases is unknown; and
- offenders may be charged solely with this offense or be charged with trespassing in conjunction with other offenses.

State Revenues

The bill specifies a penalty of \$500 for a first offense increasing to a class 1 misdemeanor for a second offense and a class 4 felony for a third offense. The penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. The penalty for a class 4 felony is 2 to 6 years imprisonment in a state facility, a fine of \$2,000 to \$500,000, or both.

Fines are 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. Because first-time offenders are unlikely to pay the fine and the courts have the discretion of incarceration or imposing a fine for subsequent offenses, the impact to state revenue cannot be determined.

State Expenditures

Judicial Branch. The fiscal note assumes that most offenses of trespassing by illegal immigrants will be in conjunction with other offenses, such as traffic offenses. Consideration of the trespassing offense is not expected to take significantly more time than the case would otherwise. Those cases where trespassing is the sole charge will increase the workload of the courts, but the volume of such cases is unknown at this time. The fiscal note assumes that the annual budget process will be used to increase funding once caseload volume is determined.

Department of Corrections (DOC). The bill is expected to increase department expenditures by \$435,970 starting in FY 2007-08, as indicated in Table 1. The bill creates a class 4 felony for third and subsequent offenses of trespassing by illegal aliens. As described in the background section, it is difficult to determine the number of convictions, particularly third and subsequent convictions resulting in prison time. However, it is likely that some offenders currently convicted of lesser crimes, such as misdemeanors, will instead be prosecuted under this new felony. The fiscal note anticipates 5 new felony convictions with sentencing to DOC per year starting in FY 2008-09.

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 \$87,194 per inmate bed. Operating costs are \$73.46 per bed per day or \$26,813 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 sentencing.

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 \$50.28 per bed per day or \$18,352 per bed per year.

Table 1. Five-Year Fiscal Impact On Correctional Facilities				
Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2006/07	0.0	\$0	\$0	\$0
FY 2007/08	0.0	435,970	0	435,970
FY 2008/09	5.0	435,970	134,065	570,035
FY 2009/10	10.0	340,057	268,130	608,187
FY 2010/11	13.9	0	372,701	372,701
Total		\$1,211,997	\$774,896	\$1,986,892

Local Government Impact

The bill specifies a penalty of a class 1 misdemeanor for a second offense of trespassing by illegal aliens. The penalty for a class 1 misdemeanor is six to 18 months imprisonment in a county jail, 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. At this time, the fiscal note does not estimate the number of second time offenders to the crime of trespassing by illegal aliens.

The fiscal impact for local law enforcement agencies is likely to be significant due to limited law enforcement personnel and budgets. In addition, agency staff may require training in how to determine a person's immigration status, as required by federal law. The fiscal note does not estimate costs for local law enforcement agencies.

State Appropriations

For FY 2006-07, no appropriations are required.

For FY 20076-08, the Department of Corrections will require a \$435,970 General Fund transfer to the Capital Construction Fund, plus the five-year costs identified in Table 1.

Departments Contacted

Corrections
Public Safety

Judicial Branch
Office of the Public Defender

Law