



**Colorado
Legislative
Council
Staff**

SB16-098

FISCAL NOTE

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 16-0957
Prime Sponsor(s): Sen. Steadman

Date: February 19, 2016
Bill Status: Senate Judiciary
Fiscal Analyst: Kerry White (303-866-3469)

BILL TOPIC: RESTORE JUDICIAL DISCRETION IN CRIMINAL SENTENCING

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue	<u>at least \$200,700</u>	<u>at least \$410,700</u>
Cash Funds	at least 200,700	at least 410,700
State Expenditures	<u>\$380,377</u>	<u>(\$7,134,167)</u>
General Fund	333,673	(7,184,534)
Centrally Appropriated Costs	46,704	50,367
TABOR Impact	at least \$200,700	at least \$410,700
FTE Position Change	4.3 FTE	4.7 FTE
Appropriation Required: \$333,673 - Judicial Department (FY 2016-17); and (\$65.0 million) - Department of Corrections (FY 2016-17 - FY 2020-21)		
Future Year Impacts: Ongoing increase in state revenue and decrease in state expenditures.		

NOTE: While all agencies were canvassed for this fiscal note, not all agencies responded with complete information. Therefore, this fiscal note should be considered preliminary. It will be updated if new information becomes available.

Summary of Legislation

This bill repeals many mandatory sentencing provisions for felonies, drug felonies, and misdemeanors. The bill also repeals the extraordinary risk of harm sentencing enhancer. The bill reclassifies certain stalking and child abuse offenses as crimes of violence, and repeals the sentencing enhancer for using a dangerous or semiautomatic assault weapon in the commission of a crime of violence. The bill also amends other mandatory sentencing requirements to require a court to sentence a defendant to the minimum of the presumptive range instead of the midpoint of a presumptive range. Finally, the bill repeals many consecutive sentencing requirements.

Background

This bill makes a large number of changes to sentencing as described in detail below.

Extraordinary risk of harm crimes. Under current law, certain crimes are designated as posing an extraordinary risk of harm to society. For these crimes, the maximum of the presumptive range is increased by 4 years for a class 3 felony, by 2 years for a class 4 felony, by 1 year for a class 5 felony, and by 6 months for a class 6 felony or class 1 misdemeanor. This enhancer is applied prior to any other sentencing changes, such as those for crimes of violence. Under this bill, a number of crimes will have maximum penalties reduced, such as:

- non-crime of violence child abuse (penalties range from a class 3 misdemeanor to a class 2 felony);
- unlawful distribution, manufacturing, sale, and possession of or sale or distribution of materials to manufacture controlled substances with the intent to sell (penalties range from a level 1 drug misdemeanor to a level 1 drug felony);
- any crime of violence (see Table 1, below);
- felony invasion of privacy for sexual gratification (penalties range from a class 1 misdemeanor to a class 6 felony); and
- class 3 felony human trafficking for involuntary or sexual servitude.

Crimes of violence and aggravating circumstances. Under current law, the presence of an aggravating circumstance in a felony requires the defendant be sentenced to between the midpoint and up to twice the maximum of the presumptive range for the felony classification. A crime of violence (COV) is subject to this range, *after* application of a sentencing enhancer. This bill removes the extraordinary risk enhancer and requires these crimes to have sentence ranges of the minimum up to twice the maximum. Table 1 shows the changes in sentencing ranges.

Class of Crime	Current Sentence Range	New Sentence Range*
Class 2 (COV)	16 years, \$5,000 fine to 48 years, \$1 million fine	8 years, \$5,000 fine to 48 years, \$1 million fine
Class 2 (aggravating circumstances)	16 years, \$5,000 fine to 48 years, \$1 million fine	8 years, \$5,000 fine to 48 years, \$1 million fine
Class 3 (COV)	10 years, \$3,000 fine to 32 years, \$750,000 fine	4 years, \$3,000 fine to 32 years, \$750,000 fine
Class 3 (aggravating circumstances)	8 years, \$3,000 fine to 24 years, \$750,000 fine	4 years, \$3,000 fine to 32 years, \$750,000 fine
Class 4 (COV)	5 years, \$2,000 fine to 16 years, \$500,000 fine	2 years, \$2,000 fine to 16 years, \$500,000 fine
Class 4 (aggravating circumstances)	4 years, \$2,000 fine to 12 years, \$500,000 fine	2 years, \$2,000 fine to 16 years, \$500,000 fine
Class 5 (COV)	30 months, \$1,000 fine to 8 years, \$100,000 fine	1 year, \$1,000 fine to 8 years, \$100,000 fine
Class 5 (aggravating circumstances)	2 years, \$1,000 fine to 6 years, \$100,000 fine	1 year, \$1,000 fine to 8 years, \$100,000 fine
Class 6 (COV)	18 months, \$1,000 fine to 4 years, \$100,000 fine	1 year, \$1,000 fine to 4 years, \$100,000 fine
Class 6 (aggravating circumstances)	15 months, \$1,000 fine to 3 years, \$100,000 fine	1 year, \$1,000 fine to 4 years, \$100,000 fine

*If required to sentence to prison. This bill removes the mandatory minimum sentence for these offenses.

Table 2, below, shows the changes in sentencing for specific crimes under SB16-098.

Table 2. Changes in Sentencing For Specific Crimes Under SB16-098		
Offenses	Current Law Sentencing Requirement*	Sentencing and other changes under SB16-098*
Felony Violation of Bail Bond Conditions	Class 6 felony, requires a 12 month minimum consecutive sentence	Optional to sentence consecutively
Misdemeanor Violation of Bail Bond Conditions	Class 3 misdemeanor, requires a 6 month minimum consecutive sentence to jail	Optional to sentence consecutively
First degree assault, victim is a peace officer, firefighter, or emergency medical personnel (COV)	Class 3 felony, requires a mandatory sentence of 10 to 32 years OR Class 5 felony, requires a mandatory sentence of 30 months to 8 years	Class 3 felony, if sentenced, requires 4 to 32 years OR Class 5 felony, if sentenced, requires 1 to 8 years
Second degree assault, victim is a peace officer, firefighter, or emergency medical personnel (COV)	Class 3 felony, requires a mandatory sentence of 10 to 32 years OR Class 4 felony, requires a mandatory sentence of 5 to 16 years OR Class 6 felony, requires a mandatory sentence of 18 months to 4 years	Class 3 felony, if sentenced, requires 4 to 32 years OR Class 4 felony, if sentenced, requires 2 to 16 years OR Class 6 felony, if sentenced, requires 1 to 4 years
Third degree assault, victim is a peace officer, firefighter, or emergency medical personnel	Requires a mandatory sentence of 2 to 4 years to the DOC	If sentenced, requires 1.5 to 3 years in DOC
Participation in a Prison Riot Without a Weapon	Requires a mandatory sentence of 2 to 10 years in DOC	Optional to sentence to DOC
Third degree assault	Requires a sentence of 6 months to 2 years in jail	If sentenced, requires 6 to 18 months in jail
Level 1 Drug Felony	Mandatory sentence of 8 to 32 years in DOC	Optional sentence to DOC
Level 1 Drug Felony with Aggravating Factors	Mandatory sentence of 12 to 32 years in DOC	Optional sentence to DOC
Removal of an incendiary device	Class 4 felony, mandatory minimum sentence to DOC of 2 years OR Class 3 felony, mandatory minimum sentence to DOC of 4 years	Removes mandatory minimum sentence to the DOC for either offense.
Stalking	Class 4 felony, if sentenced to DOC, range is 2 to 8 years OR Class 5 felony, if sentenced to DOC, range is 1 to 4 years	Becomes a crime of violence if other conditions are met: For the Class 4 felony, if sentenced, requires 2 to 16 years OR For the Class 5 felony, if sentenced, requires 1 to 8 years
Felony child abuse Class 2 felony	Class 2 felony, requires mandatory sentence of 16 to 48 years	Becomes a crime of violence, if sentenced, requires 8 to 48 years
Felony child abuse Class 3 felony	Class 3 felony, requires mandatory sentence of 8 to 24 years	Becomes a crime of violence, if sentenced, requires 4 to 32 years

Table 2. Changes in Sentencing For Specific Crimes Under SB16-098 (Cont.)		
Offenses	Current Law Sentencing Requirement*	Sentencing and other changes under SB16-098*
Felony vehicular homicide while in commission of another felony	Class 4 felony requires mandatory sentence of 4 years to 12 years OR Class 3 felony requires mandatory sentence of 8 to 24 years	Class 4 felony, if sentenced, range is 2 to 16 years OR Class 3 felony, if sentenced, range is 4 to 32 years
Class 3 felony robbery of an at-risk adult or juvenile (non-COV)	Class 3 felony requires a mandatory minimum term of 4 to 12 years	Optional sentence to DOC.
Use of a Dangerous Weapon with a Crime of Violence	Mandatory sentence of 5 years in DOC, to be served consecutively to other sentence(s)	Removes additional penalty
Escape in Connection with Petty or Misdemeanor Offenses	Depending on the circumstances, requires a 2 or 4 month sentence to jail to be served consecutive to original offense	Optional to sentence consecutively.
Identity Theft with Prior Conviction	Class 4 felony, requires a mandatory sentence of 2 to 12 years, plus any fines	No special enhancer for prior conviction, becomes optional sentence to DOC.
Sexual assault prior to November 1998	Class 2 felony, requires mandatory sentence of 16 to 48 years,	Class 2 felony, requires mandatory sentence of 8 to 48 years
Sexual assault after November 1998 or crime of violence	Class 2 felony, requires mandatory sentence of 16 years to natural life	Class 2 felony, requires mandatory sentence of 8 years to natural life

*These sentences may also include fines

Miscellaneous changes. The bill makes several non-specific sentencing changes for other offenses, as shown in Table 3.

Table 3. Miscellaneous Sentencing Changes Under SB16-098		
Offense or Sentence Option	Current Sentence Range or Requirement	New Sentence Range or Requirement
Committing a Sexual Offense While Knowingly HIV Positive	Mandatory sentence of at least 3 times the upper limit of the presumptive range to natural life	Optional sentence to DOC
Two or More Separate Crimes of Violence Arising from the Same Criminal Episode	Sentences are served consecutively	Optional to sentence consecutively
Probation or Community Corrections	A court may not sentence a defendant to probation or community corrections for any offense that requires a term of incarceration	Court can sentence to probation or community corrections at the judge's discretion
Two or More Prior Felonies	A court may not provide a sentence of a fine only and must sentence the defendant to at least the minimum term of the presumptive range	A court may not provide a sentence of a fine only, however sentencing to a term of incarceration is at judge's discretion
Suspension of Sentence	A court can suspend the sentence unless the offense requires a sentence of incarceration in DOC, community corrections, or Jail	Court can suspend a sentence at the judge's discretion

Juvenile offenses. The bill makes two changes to juvenile offenses, as shown in Table 4.

Table 4. Changes in Sentencing Ranges for Certain Juvenile Offenses Under SB16-098		
Offense	Current Sentence Range	New Sentence Range
Juvenile Detention	Mandatory sentence in juvenile detention of at least 5 days	Optional sentence to juvenile detention
Juvenile Failure to Register as a Sex Offender	Mandatory sentence in juvenile detention of either 30 days or 45 days	Optional sentence to juvenile detention

Offenses against pregnant victims. Table 5 shows the modification in sentences for crimes when the defendant knew or should have reasonably known that the victim was pregnant under SB16-098.

Table 5. Changes in Sentencing Ranges for Certain Offenses Against Pregnant Women Under SB16-098		
Offense	Current Sentence Range*	New Sentence Range*
Murder in the Second Degree (COV)	Class 2 felony, requires mandatory sentence of 16 to 48 years OR Class 3 felony heat of passion, requires mandatory sentence of 10 to 32 years	Class 2 felony, if sentenced, requires 8 to 48 years OR Class 3 felony, if sentenced, requires 4 to 32 years
Manslaughter	Class 4 felony, if sentenced, requires a term of 4 to 12 years	Class 4 felony, if sentenced, requires a term of 2 to 16 years
Criminally Negligent Homicide	Class 5 felony, if sentenced, requires a term of 2 to 6 years	Class 5 felony, if sentenced, requires a term of 1 to 8 years
Vehicular Homicide	Class 3 felony, if sentenced requires a term of 8 to 24 years OR Class 4 felony, if sentenced requires a term of 4 to 12 years	Class 3 felony, if sentenced, requires a term of 4 to 32 years OR Class 4 felony, if sentenced requires a term of 2 to 16 years
Assault in the First Degree (COV)**	Class 3 felony, requires a mandatory sentence of 10 to 32 years OR Class 5 felony, requires a mandatory sentence of 30 months to 8 years	Class 3 felony, if sentenced, requires a term of 4 to 32 years OR Class 5 felony, if sentenced requires a term of 1 to 8 years
Assault in the Second Degree***	Class 3 felony, requires a mandatory sentence of 10 to 32 years OR Class 4 felony, requires a mandatory sentence of 5 to 16 years OR Class 6 felony, requires a mandatory sentence of 18 months to 4 years	Class 3 felony, if sentenced, requires 4 to 32 years OR Class 4 felony, if sentenced, requires 2 to 16 years OR Class 6 felony, if sentenced, requires 1 to 4 years
Vehicular Assault	Class 4 felony, if sentenced, requires a term of 4 to 12 years OR Class 5 felony, if sentenced, requires a term of 2 to 6 years	Class 4 felony, if sentenced requires a term of 2 to 16 years OR Class 5 felony, if sentenced, requires a term of 1 to 8 years

* These sentences may also include fines

** Certain offenses committed by someone already incarcerated require a consecutive term in the DOC

*** Most of these offenses are crimes of violence, for those that are not, sentencing is changed to the minimum for the presumptive range and a maximum of 32 years for a class 3 felony, 16 years for a class 4 felony, or 8 years for a class 6 felony.

State Revenue

This bill will increase state revenue by at least \$200,700 in FY 2016-17 and by at least \$410,700 in FY 2017-18 and future years, as described below.

Removal of mandatory fines. Under the bill, mandatory fines are assessed for defacing property (\$750), animal cruelty (\$500 or \$1,000), firing woods or prairie (\$250 and \$1,000), and underage possession of ethyl alcohol (\$100 or \$250). In calendar year 2015, a total of \$143,000 in fines was assessed for these crimes. This analysis assumes that fines will be reduced by approximately 10 percent, resulting in a net reduction of \$14,300.

Increased fees for supervision. The fiscal note assumes that a total of 350 offenders will be sentenced to probation or community corrections in lieu of prison each year. Persons under supervision pay a fine of \$50 per month. For purposes of estimating an initial fiscal impact, the fiscal note assumes that the average length of supervision for each offender will be two years (the actual length of time can vary substantially and will depend on a variety of factors and sex offenders are likely to serve at least five years on probation). This results in an estimated increase of revenue of \$210,000 in FY 2016-17 and \$420,000 in FY 2017-18 in future years.

Increased criminal penalties. The fiscal note assumes that some offenders who are given alternative sentences to incarceration will be assessed fines under SB16-098. Because fines are at the discretion of the judge and based on individual case circumstances, this increase has not been estimated. The fiscal note assumes the increase will be at least \$5,000 per year.

TABOR Impact

This bill increases state cash fund revenue from criminal penalties and probation fees, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund.

Assumptions

The estimates provided in this fiscal note are based on the following assumptions:

Identity theft. According to court records, there are an average of 402 cases per year of identity theft that include a sentence to the DOC and it is assumed that many of these cases involve second and subsequent offenses. Identity theft is a Class 4 felony, punishable by a prison term of 2 to 6 years. Although the precise impact cannot be determined due to a lack of specific data, the fiscal note assumes:

- 50 percent (201 offenders) will continue to be sentenced to the DOC;
- 30 percent (121 offenders) will receive a sentence to probation in lieu of prison, saving an estimated 34.0 months in prison per offender; and
- 20 percent (80 offenders) will receive a sentence to community corrections in lieu of prison, saving an estimated 34.0 months in prison per offender (a portion of these costs will be offset by an indeterminate increase in costs for community corrections).

Crimes of violence. For crimes of violence (COV) affected by this bill, the fiscal note assumed that cases currently sentenced at the lower third of the presumptive range may receive an alternate sentence under this bill. The assumed change in distribution of offenders is shown in Table 6. Of the sentences that will continue to be sentenced to the DOC, this analysis assumes 25 to 30 percent will move from an assumed midpoint sentence to the new minimum sentence. Offenders going to probation or community corrections will show a savings to the DOC; however, there is assumed to be an indeterminate increase in community corrections costs, which have not been estimated.

Table 6. Changes in Sentencing Ranges for Crimes of Violence Under SB16-098					
Class of Crime	Average Cases Per Year	Assumed Number Going to Probation in Lieu of Prison	Assumed Number Going to Community Corrections in Lieu of Prison	Assumed Number Going to DOC but reduced to Minimum in New Sentencing Range	Per offender difference in length of stay for cases with lesser sentences to DOC
Class 3 COV	58	3	6	12	(6 years)
Class 4 COV	168	25	42	25	(3 years)
Class 5 COV	40	12	14	4	(1.5 years)
Class 6 COV	14	5	6	1	(0.5 years)
Class 3 COV Sex	11	1	1	not determined	not determined
Class 4 COV Sex	14	2	4	not determined	not determined
Class 5 COV Sex	34	10	12	not determined	not determined
Total	339	58	85	42	see above

In addition to what is shown in Table 6, the fiscal note assumes that for certain offenders, lengths of stay will be increased for offenders that remain sentenced at the upper limits of the presumptive range, which is increased for several offenses. These impacts are not expected until well into the future and are not calculated. The fiscal note assumes that increases in out years will be adjusted in the annual budget process.

Exclusions. Due to the absence of data at the time of this writing, no other impacts apart from those identified above have been calculated. The fiscal note assumes that many of the provisions of this bill will both increase or reduce costs. For example, recidivism rates may change, fewer juveniles may be sentenced to detention, judges may opt to suspend sentences, and judges may choose to sentence fewer crimes consecutively. The fiscal note assumes that all impacted agencies in the Judicial Department and Departments of Corrections, Human Services, and Public Safety will address cost increases and decreases through the annual budget process.

State Expenditures

Overall, this bill is expected to reduce state General Fund expenditures. Based on current estimates, which are incomplete, the fiscal note expects that costs will increase by at least \$380,377 and 4.3 FTE in FY 2016-17 and by \$386,878 and 4.7 FTE for Probation Services in the Judicial Department. Costs are expected to decrease by \$65.0 million in the DOC between FY 2016-17 and FY 2020-21. These estimates do not include increases for community corrections, savings for juvenile detention facilities, or any other changes under the bill. Tables 7, 8, and 9, and the discussion that follows describe the cost increases and reductions calculated under SB16-098.

Table 7. Expenditure Increases for Probation Services Under SB16-098		
Cost Components	FY 2016-17	FY 2017-18
Personal Services	\$297,043	\$324,046
FTE	4.3 FTE	4.7 FTE
Operating Expenses and Capital Outlay Costs	36,630	12,465
Centrally Appropriated Costs*	46,704	50,367
TOTAL	\$380,377	\$386,878

* Centrally appropriated costs are not included in the bill's appropriation.

Probation services. Costs shown in Table 7 are for probation staff to supervise offenders sentenced to probation or community corrections. The fiscal note assumes that at least 350 offenders per year will receive these alternative sentences, which requires 3.3 FTE probation officers, 0.7 FTE probation supervisor, and 0.7 FTE support services. One-time capital outlay costs of \$4,273 and annual operating costs of \$950 are provided, on a prorated basis, for the support services staff. Probation officer and probation supervisor staff are provided one-time capital outlay costs of \$4,973 per FTE and ongoing annual operating costs of \$2,950 per FTE, as high travel employees. First-year salaries are prorated for the General Fund pay date shift.

Trial courts and agencies providing representation for certain defenders. The fiscal note assumes that removing mandatory minimum prison terms may both increase and decrease the number and types of cases that go to trial, which effects the workload for the trial courts and the Offices of the State Public Defender and Alternate Defense Counsel. To the extent that more plea agreements are reached for certain offenders, costs will decrease. To the extent that more cases go to trial, costs will increase. On the whole, the fiscal note assumes any changes will be minimal.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 8.

Table 8. Centrally Appropriated Costs Under SB16-098		
Cost Components	FY 2016-17	FY 2017-18
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$21,285	\$21,331
Supplemental Employee Retirement Payments	25,419	29,036
TOTAL	\$46,704	\$50,367

Five-Year Fiscal Impact on Correctional Facilities

This bill is anticipated to reduce state General Fund expenditures by an estimated \$65 million between FY 2016-17 and FY 2020-21 for the Department of Corrections (DOC). Offenders placed in a private contract prison cost the state about \$59.90 per offender per day, including the current daily rate of \$56.02 and an estimated \$3.88 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 9 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 2016-17	0.0	\$0	\$0	\$0
FY 2017-18	(344.0)	\$0	(\$7,521,045)	(\$7,521,045)
FY 2018-19	(672.2)	\$0	(\$14,696,827)	(\$14,696,827)
FY 2019-20	(932.7)	\$0	(\$20,390,811)	(\$20,390,811)
FY 2020-21	(1,024.5)	\$0	(\$22,399,702)	(\$22,399,702)
Total				(\$65,008,385)

Department of Public Safety. This analysis assumes that sentences to community corrections will increase by at least 165 offenders per year, which will increase costs within the Department of Public Safety. As of this writing, the cost increase for this program has not been estimated, but will offset a portion of the savings to the DOC.

Department of Human Services. To the extent that this bill causes judges to sentence fewer juveniles to detention, costs within the Department of Human Services (DHS) will decrease by an indeterminate amount. The Division of Youth Corrections within the DHS oversees youths in the juvenile justice system between the ages of 10 and 21 who have been detained, committed, or paroled. Pursuant to Senate Bill 13-177, the number of juvenile detention beds is capped at 382. The average cost for each juvenile in detention is \$238 per day.

Local Government Impact

This bill will effect local governments in several key ways. First, it may change workload related to prosecution of offenses. Similar to the trial courts, this analysis assumes that removing mandatory minimum sentences could both reduce and increase the number and length of trials. Second, this bill may result in more jail sentences in lieu of prison, in addition to any other sentence (such as probation, community corrections, or fines). 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 fiscal note has not estimated the impact, but notes that this impact has the potential to be significant.

Effective Date

The bill takes effect July 1, 2016, and applies to offenses committed on or after this date.

State Appropriations

For FY 2016-17, the bill requires an appropriation of \$333,673 General Fund and an allocation of 4.3 FTE to the Judicial Department. The bill also requires the reduction in appropriations of (\$65,008,385) General Fund for the DOC shown in Table 9, above.

State and Local Government Contacts

Corrections
Judicial

District Attorneys
Public Safety

Information Technology

Research Note Available

An LCS Research Note for SB16-098 is available online and through the iLegislate app. Research notes provide additional policy and background information about the bill and summarize action taken by the General Assembly concerning the bill.