



Legislative Council Staff

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FISCAL NOTE

Drafting Number: LLS 18-1215 Date: April 30, 2018
Prime Sponsors: Sen. Priola; Martinez Humenik Bill Status: Senate Finance
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Bill Topic: INCREASE PENALTY FOR FIRST RESPONDER ASSAULTS

- Summary of Fiscal Impact: State Revenue, State Expenditure, State Transfer, TABOR Refund, Local Government, Statutory Public Entity

This bill increases the penalty for assault on a firefighter or peace officer by one class making it a class 3 felony crime of violence with a sentence of 10 to 32 years. This bill increases state and local government revenue, expenditures, and workload on an ongoing basis.

Appropriation Summary: This bill requires a five-year appropriation of \$818,487 to the Department of Corrections.

Fiscal Note Status: This fiscal note reflects the introduced bill.

Table 1 State Fiscal Impacts Under SB 18-278

Table with 4 columns: Category, Fund, FY 2018-19, FY 2019-20, FY 2022-23. Rows include Revenue, Expenditures, Transfers, and TABOR Refund.

Summary of Legislation

Under current law, second degree assault on a firefighter or a peace officer is a class 4 felony crime of violence with a sentence of incarceration in the Department of Corrections (DOC) of between 5 and 16 years. This bill increases the penalty for assault on a firefighter or peace officer by one class, making it a class 3 felony crime of violence with a sentence of 10 to 32 years.

Comparable Crime and Assumptions

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. This bill changes the classification of existing crimes for second degree assault on a firefighter or peace officer.

Second degree assault on a peace officer. Since 2015, there have been 618 convictions of second degree assault on a peace officer (478 Male, 139 Female, 1 unknown; 475 Caucasian, 83 African American, 41 Hispanic, 9 other, 7 Native American, 2 Asian, and 1 unknown). Of these, 314 or approximately 105 per year were sentenced to a term of incarceration in the DOC. Offenders not sentenced to DOC were sentenced to alternative sentences including diversion programs, direct sentences to community corrections, and sentences to probation with intensive supervision or electronic surveillance.

Second degree assault on a firefighter. Data on the number of assaults on a firefighter was not available at the time of this writing. However, it is assumed that assault on a firefighter is less common with approximately 20 convictions per year.

Assumptions

Under this bill, it is assumed that current sentencing patterns in which approximately 50 percent of offenders are sentenced to DOC with the remaining sentenced to alternative sentences will continue. Based on this, it is assumed that:

- 105 offenders per year previously sentenced for a class 4 felony for second degree assault on a peace officer will instead be sentenced for a class 3 felony; and
- 20 offenders per year previously sentenced for a class 4 felony for second degree assault on a firefighter will instead be sentenced for a class 3 felony.

In total, it is assumed that 125 offenders will be sentenced to a term in DOC with an average length of stay in DOC of 86.8 months compared to 44.4 months under current law.

State Revenue

Beginning in the FY 2018-19, this bill increases state revenue by less than \$10,000 per year.

Criminal fines. The bill increases state revenue, credited to the Fines Collection Cash Fund in the Judicial Department. Under current law, the fine penalty for second degree assault on firefighter or a peace officer ranges from \$2,000 to \$500,000 depending on the circumstance of

the crime. By increasing the classification of these crimes, this bill establishes a new range of \$3,000 to \$750,000 and potentially increases criminal fine revenue. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. Based on the low number of fines typically imposed by the courts, the fiscal note assumes that any revenue generated will be minimal and less than \$10,000 per year.

Probation supervision revenue. For offenders sentenced to probation, by increasing the sentence for assault on a firefighter or a peace officer, this bill may increase the length of probation sentences which will increase supervision revenue. Offenders on probation pay a supervision fee of \$50 per months. This impact has not been estimated.

TABOR Refund

This bill increases state revenue from criminal fines and probation supervision fees, which will increase the amount of money required to be refunded under TABOR by less than \$10,000 for FY 2018-19 and FY 2019-20. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount. State revenue subject to TABOR is not estimated for years beyond FY 2019-20.

State Expenditures

Beginning in the FY 2018-19, this bill increases workload and state expenditures in the Judicial Department and agencies that provide representation to indigent persons. It also increases state General Fund expenditures in the Department of Corrections beginning in FY 2022-23, as discussed below.

Judicial Department. While this bill is not expected to increase the number of cases involving assault on a firefighter or peace officer, by increasing classification of these crimes, this bill may increase the complexity of such cases which will increase trial court workload. To the extent that increasing the crime classification increases the number of plea bargains due to a longer potential prison sentence, trial court workload will decrease. Additionally, this bill may increase probation workload by increasing the amount of time offenders serve on probation. Overall, these workload impacts are expected to be minimal and can be accomplished within existing appropriations.

Agencies providing representation to indigent persons. Workload and costs for the Office of the State Public Defender and the Office of the Alternate Defense Counsel may increase due to more complex trials or decrease if plea bargains increase. To the extent this occurs, this analysis assumes the affected offices will request adjustments in appropriations through the annual budget process.

Department of Corrections. This bill increases prison bed costs for the DOC by \$818,487 beginning in FY 2022-23.

Prison beds. This bill is anticipated to increase state General Fund expenditures for the DOC by an estimated \$818,487 beginning in FY 2022-23. This increase is based on 125 second degree assault offenders previously sentenced for second degree assault to a term in DOC for a class 4 felony with an average length of stay of 44.4 months, instead being sentenced for a class 3

felony with an average length of stay of 86.8 months. Table 2 shows the estimated cost of the bill over the next five fiscal years. Prison bed costs continue beyond FY 2022-23, but have not been estimated since they are outside of the five year period covered by this analysis.

**Table 2
Prison Costs Under SB 18-278**

	Inmate Bed Impact	Operating Cost
FY 2018-19	-	-
FY 2019-20	-	-
FY 2020-21	-	-
FY 2021-22	-	-
FY 2022-23	37.1	\$818,487
Total Cost		\$818,487

Parole. Once an offender is released from prison, he or she is assigned to parole. By increasing the criminal classification for second degree assault on a firefighter or peace officer this bill increases the length of parole for offenders. The average length of stay on parole for a class 3 violent offender is 42.5 months. The average length of stay on parole for a class 4 violent offender is 26.8 months. For informational purposes, using the average parole daily rate of \$13.03 this bill is expected to increase parole costs by approximately \$6,141 per offender. However no appropriation is required because these impacts are outside of the five year period covered by this analysis. It is assumed the DOC will request future appropriations through the annual budget process.

For additional information about costs in fiscal notes for bills affecting the Department of Corrections, please visit: leg.colorado.gov/fiscalnotes.

Local Government

By increasing the criminal classification of these cases, this bill may increase trial length, which will increase district attorney workload. Alternatively, to the extent that this bill results in fewer trials because of the acceptance of a plea bargain due to longer potential prison sentences, district attorney workload will decrease. Overall, the impact of this bill on district attorney workload is expected to be minimal.

Effective Date

The bill takes effect July 1, 2018, and applies to offenses committed on or after this date.

State Appropriations

For FY 2018-19, this bill requires a General Fund appropriation for the five-year DOC prison bed impact as shown in Table 2. The total DOC five-year appropriation required is \$818,487.

State and Local Government Contacts

Corrections

District Attorneys

Judicial