



Legislative  
Council Staff

*Nonpartisan Services for Colorado's Legislature*

**FISCAL NOTE**

<b>Drafting Number:</b>	LLS 18-1059	<b>Date:</b>	March 27, 2018
<b>Prime Sponsors:</b>	Sen. Priola; Martinez Humenik	<b>Bill Status:</b>	Senate Judiciary
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**Bill Topic:** INCREASE PENALTY FOR PEACE OFFICER ASSAULTS

**Summary of Fiscal Impact:**

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill increases the penalty level for assault on a peace officer and requires the court to sentence the defendant to a term of incarceration of at least the maximum sentence and no more than two and one-half times the maximum of the presumptive range of the offense. This bill decreases state Judicial Department and local government revenue and expenditures on an ongoing basis. Department of Corrections expenditures are increased on an ongoing basis.

**Appropriation Summary:** This bill requires a five-year prison bed impact appropriation of \$47.3 million to the Department of Corrections.

For FY 2018-19, this bill requires a reduction of \$114,453 in Judicial Department appropriations.

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

**Table 1  
State Fiscal Impacts Under SB 18-199**

		<b>FY 2018-19</b>	<b>FY 2019-20</b>
<b>Revenue</b>	General Fund and Cash Funds	(at least \$73,120)	(at least \$73,120)
<b>Expenditures</b>	General Fund	(\$114,453)	\$4,657,643
	Centrally Appropriated	(\$29,680)	(\$29,680)
	<b>Total</b>	<b>(\$144,133)</b>	<b>4,627,963</b>
	<b>Total FTE</b>	<b>(1.7 FTE)</b>	<b>(1.7 FTE)</b>
<b>Transfers</b>		-	-
<b>TABOR Refund</b>	General Fund	(at least \$73,120)	(at least \$73,120)

**Summary of Legislation**

This bill increases the penalty level for assault on a peace officer and requires the court to sentence the defendant to a term of incarceration of at least the maximum sentence and no more than two and one-half times the maximum of the presumptive range of the offense. These crime classification changes are summarized in Table 2.

**Table 2  
 Assault Crime Classifications Under Current Law and SB 18-199**

	<b>Current Crime Class*</b>	<b>Current Min. Sentence</b>	<b>Current Max. Sentence</b>	<b>SB 199 Crime Class</b>	<b>SB 199 Min. Sentence</b>	<b>SB 199 Max. Sentence</b>
First Degree Assault	Class 3 Felony	10 years, \$3,000 fine, or both	32 years, \$750,000 fine, or both	Class 2 Felony	24 years, \$5,000	60 years, \$1 million
Second Degree Assault	Class 4 Felony	5 years, \$2,000 fine, or both	16 years, \$500,000 fine, or both	Class 3 Felony	16 years, \$3,000	40 years, \$750,000
Third Degree Assault	Class 1 Misdemeanor	6 months, \$500 fine, or both	24 months, \$5,000 fine or both	Class 6 Felony	2 years \$1,000	5 years, \$100,000

\* Generally, under current law, first degree assault on a peace officer is a class 3 felony, but could be a class 4 or 5 felony depending on the circumstance of the crime. Second degree assault on a peace officer is a class 4 felony, but could be sentenced as a class 3, 5, or 6 felony. Third degree assault on a peace officer is a class 1 misdemeanor, but could be sentenced a class 2 misdemeanor.

**Background**

Under current law, any first degree or second degree assault charge is considered a crime of violence and the sentence is enhanced to at least the midpoint and no more than twice the maximum of the presumptive range. This sentence may be modified by the court after the offender has served 119 days in the Department of Corrections (DOC) based on an evaluation and diagnosis of the violent offender report and if unusual or eventuating circumstances exist. Some second degree assault cases do not require sentencing as a crime of violence (HB 15-1303). Third degree assault is considered an extraordinary risk of harm to society crime and the sentence is enhanced. Not all persons convicted of a felony receive a sentence to incarceration in the Department of Corrections (DOC) because current law authorizes alternative sentencing such as deferred prosecution, deferred sentencing, probation, or community corrections.

**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 assault on a peace officer. Data from the last three years on first, second, and third degree assault on a peace officer sentencing was analyzed to determine the prevalence of prison sentences for these crimes.

**First degree assault on a peace officer.** Since 2015, there have been 35 convictions of first degree assault on a peace officer (32 Male, 3 Female; 27 Caucasian, 4 African American, 2 Hispanic, 1 Asian, and 1 other). Of these, 2 resulted in a sentence of a term of incarceration in the DOC.

**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 Indian, 2 Asian, and 1 unknown). Of these, 13 were sentenced to a term of incarceration in the DOC.

**Third degree assault on a peace officer.** Since 2015, there have been 11 convictions of third degree assault on a peace officer (10 Male, 1 Female; 8 Caucasian, 2 African American, and 1 Hispanic.) Of these, 1 was sentenced to a term in county jail.

**DOC impact assumptions.** Its believed that the low sentencing rate in the data described above is the result of alternative sentencing and offenders committing assault on a police officer during the commission of another crime and being sentenced according to the highest charge. This analysis assumes that under this bill, all defendants convicted of assault on a peace officer will be sentenced to a term of incarceration and that the increased penalties created by this bill will make assault on a peace officer the highest charge. Under this bill the following sentences are assumed:

- 11 offenders per year will be sentenced for first degree assault on a peace officer (class 2 felony) and sentenced to a term of at least 24 years in DOC;
- 202 offenders per year will be sentenced for second degree assault on a peace officer (class 3 felony) and sentenced to a term of at least 16 years in DOC;
- 4 offenders per year will be sentenced for third degree assault on a peace officer (class 6 felony) and sentenced to a term of at least 2 years in DOC instead of county jail;
- 1 offender per year previously sentenced for first degree assault on a peace officer to a term in DOC for a class 3 felony will instead be sentenced for a class 2 felony and will serve a longer term in DOC; and
- 4 offenders per year previously sentenced for second degree assault on a peace officer to a term in DOC for a class 4 felony, will instead be sentenced for a class 3 felony and serve a longer term in DOC.

The number of offenders sentenced to incarceration in DOC will decrease to the extent that the mandatory sentences created by this bill increase the number of plea bargains. This impact has not been estimated, but the fiscal note assumes any adjustments required to DOC appropriations will be addressed through the annual budget process.

## **State Revenue**

Beginning in FY 2018-19, overall this bill is anticipated to decrease state revenue by at least \$73,120 per year, as described below.

**Criminal fines.** The bill decreases state revenue, credited to the Fines Collection Cash Fund in the Judicial Department. Under current law, the fine penalty for assault on a peace officer ranges from \$500 to \$750,000 depending on the circumstance of the crime. By increasing the classification of these crimes, this bill potentially increases criminal fine revenue. However, by requiring a mandatory sentence, criminal fine revenue from these cases is expected to decrease

by an unknown amount because fines are infrequently assessed when an offender is sentenced to the DOC. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined.

**Court and administrative fees.** The bill will also increase state fee revenue credited to the General Fund and various cash funds. Fees are imposed for a variety of court-related costs, which vary based on the offense but may include drug or sex offender surcharges, victim compensation, and late fees, among others. By making third degree assault on a peace officer a class 6 felony additional district court fees may be assessed from Denver county court cases becoming Denver district court cases. Some fee revenue is shared with local governments; refer to the Local Government Impact section for additional information.

**Probation supervision revenue.** By requiring mandatory sentencing for assault on a peace officer, this bill decreases probation supervision revenue by an estimated \$73,120. This is based on \$228,500 in assessed probation supervision fees in FY 2017-18 for probationers convicted of assault on a peace officer with a historical collection rate of 32 percent applied.

### **TABOR Refund**

On net, this bill decreases state revenue subject to TABOR from criminal fines, and probation supervision fees, which will decrease the amount of money required to be refunded under TABOR by at least \$73,120 for FY 2018-19 and FY 2019-20.

For FY 2018-19 and FY 2019-20, the bill reduces the TABOR refund obligation by at least \$73,120 while reducing General Fund revenue, resulting in a net decrease of at least \$73,120 in the amount available for the General Fund budget. State revenue subject to TABOR is not estimated beyond FY 2019-20.

### **State Expenditures**

Beginning in FY 2018-19, this bill results in a net increase workload for the Judicial Department. Probation expenditures are expected to decrease by \$144,133 and 1.7 FTE on an ongoing basis as shown in Table 3. This bill also increases state General Fund expenditures in the Department of Corrections by \$47.3 million between FY 2018-19 and FY 2022-23 as shown in Tables 4 and 5. These impacts are discussed below.

**Table 3  
 Expenditures Under SB 18-199**

<b>Cost Components</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>
<b>Judicial Department</b>		
Personal Services	(\$109,438)	(\$109,438)
Operating Expenses and Capital Outlay Costs	(\$5,015)	(\$5,015)
Centrally Appropriated Costs*	(\$29,680)	(\$29,680)
FTE – Personal Services	(1.7 FTE)	(1.7 FTE)
<b>Total</b>	<b>(\$144,133)</b>	<b>(\$144,133)</b>
<b>Total FTE</b>	<b>(1.7 FTE)</b>	<b>(1.7 FTE)</b>

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

**Judicial Department.** While this bill is not anticipated to increase the number of case filings, the increased penalties may increase trial length, which will increase workload in the trial courts. To the extent that the mandatory sentences created by this bill increase the number of plea bargains, workload will decrease. Additionally, by changing the classification of third degree assault from a class 1 misdemeanor to a class 6 felony, this bill will shift cases from county to district court and increase workload because felony cases are more complex. The net impact to court workload is expected to increase by a minimal amount, which can be accomplished within existing appropriations.

By implementing mandatory sentencing, this bill will reduce probation workload by reducing the number of offenders sentenced to probation. Based on FY 2017-18 data, this analysis assumes at least 162 offenders previously sentenced to probation will instead be sentenced to a term of incarceration in DOC. This results in a workload reduction of at least 3,574 hours or 1.7 FTE.

**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 will increase under the bill. To the extent this occurs, this analysis assumes the affected offices will request an increase in appropriations through the annual budget process.

**Community Corrections.** Under current law, some offenders convicted of assault on a peace officer are sentenced to community corrections in the Department of Public Safety. This bill reduces community corrections costs as these offenders will instead be sentenced to DOC. This impact has not been estimated as of this writing.

**Department of Corrections.** This bill increases prison bed and parole costs for the DOC by approximately \$47.3 million between FY 2018-19 and FY 2022-23.

**Prison beds.** This bill is anticipated to increase state General Fund expenditures by approximately \$47.3 million between FY 2018-19 and FY 2022-23. This increase assumes at least 200 offenders will be sentenced to prison for a class 2, class 3, or class 6 felony every year. This is based on the private prison bed cost of \$60.47 per day or \$22,072 per year. The fiscal note assumes no impact will occur in the first year due to the amount of time required for criminal filing, trial, disposition and sentencing of each case. If impacts arise in the first year, this analysis assumes the DOC will request any required appropriations through the annual budget process. Table 3 shows the estimated cost of the bill over the next five fiscal years.

**Table 4  
 Prison Costs Under SB 18-199**

	<b>Inmate Bed Impact</b>	<b>Operating Cost</b>
FY 2018-19	-	-
FY 2019-20	216.0	\$4,767,308
FY 2020-21	429.0	\$9,468,548
FY 2021-22	642.0	\$14,169,788
FY 2022-23	856.2	\$18,897,220
<b>Total Cost</b>		<b>\$47,302,864</b>

**Parole.** Once an offender is released from prison, he or she is assigned to parole. Table 4 shows the estimated parole impact over the next five fiscal years for offenders convicted of class 6 felony third degree assault on a peace officer offenders, serving an average of 9.5 months on parole. This is based on a parole cost of \$13.03 per day or \$4,756 per year. No impact is expected until the first year's cohort of offenders is released to parole and no impact is shown for class 2 felony first degree assault on a peace officer and class 3 felony second degree assault on a peace officer offenders because their term of parole will not begin until after the five year period covered by this analysis.

**Table 5  
 Parole Costs Under SB 18-199**

	<b>Annualized Parole Impact</b>	<b>Annualized Operating Cost</b>
FY 2018-19	-	-
FY 2019-20	1.0	\$4,788
FY 2020-21	3.2	\$15,092
FY 2021-22	3.2	\$15,092
FY 2022-23	3.2	\$15,092
<b>Total Cost</b>		<b>\$50,064</b>

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

**Local Government Impact**

Overall, this bill is expected to decrease local government revenue, workload, and costs as described below. The exact impact to a particular local government will vary depending on the number of assault on a peace officer offenses committed within its jurisdiction.

**District Attorneys.** To the extent that this bill increases the length of assault on a peace officer trials, District Attorney workload will increase. Alternatively, to the extent that this bill results in fewer trials because of the acceptance of a plea bargain, district attorney workload will decrease. Overall, this impact is expected to be minimal and has not been estimated.

**Denver County Court.** By changing current misdemeanor assault on a peace officer crimes to a felony, Denver County Court revenue from criminal fines, administrative fees, and probation supervision fees will decrease because these cases will instead be tried in Denver District Court which is part of the state court system. Court and probation workload will also decrease.

**County Jails.** County jail costs will decrease to the extent that offenders currently convicted of misdemeanor assault on a peace officer and sentenced to county jail are instead convicted of felony assault on a peace officer and sentenced to DOC. The sentence for a class 1 misdemeanor assault on a police officer ranges from 6 months to 2 years (there has been 1 jail sentence since 2015).

**Effective Date**

The bill takes effect July 1, 2018.

**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 4. The total DOC five-year appropriation required is \$47,302,864.

This bill also requires a General Fund appropriation reduction of \$114,453 and 1.7 FTE from the Judicial Department.

**State and Local Government Contacts**

Corrections  
Public Safety

District Attorneys  
Sheriffs

Judicial