



Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 23-0403	Date:	January 20, 2023
Prime Sponsors:	Sen. Hinrichsen	Bill Status:	Senate Judiciary
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Bill Topic: **POSSESSION OF WEAPON BY PREVIOUS OFFENDER CRIMES**

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

The bill adds aggravated motor vehicle theft to the list of crimes that constitute the crime of possession of a weapon by a previous offender. Starting in FY 2023-24, state revenue and expenditures, and local expenditures, will increase on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of \$48,217 to the Judicial Department.

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

Table 1
State Fiscal Impacts Under SB 23-022

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	General Fund	\$48,217	\$133,519
	Centrally Appropriated	\$9,703	\$12,390
	Total Expenditures	\$57,920	\$145,909
	Total FTE	0.6 FTE	0.7 FTE
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$8,855	\$20,028

Summary of Legislation

Under current law, it is a class 5 felony if a previous offender of certain felonies possesses, uses, or carries a weapon. The bill adds aggravated motor vehicle theft to list of crimes that prohibits previous offenders from possessing a weapon.

Background

In 2021, the Colorado General Assembly passed [Senate Bill 21-271](#) which reclassified a number of misdemeanors and other crimes starting on March 1, 2022. As part of the reclassification, the bill made possession of a weapon by a previous offender (POWPO) a class 5 felony and removed a number of crimes that prohibited a previous offender from possessing a firearm. In 2022, the General Assembly passed [House Bill 22-1257](#), which added back certain felony convictions that prohibit a person from possessing a firearm..

Comparable Crime Analysis

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 creates a new factual basis for an existing crime. The following sections outline data on crimes that are comparable to the offense in this bill and discuss assumptions on future rates of criminal convictions resulting from the bill.

Prior conviction data. This bill creates a new factual basis for the existing offense of possession of a weapon by a previous offender by adding the crime of aggravated motor vehicle theft to the list of crimes that prohibit a felony offender from possessing a firearm. From FY 2019-20 to FY 2021-22, 2,719 individuals have been convicted and sentenced for POWPO offenses. Of the persons convicted, 2,570 were male, 145 were female, and 4 did not have a gender identified. Demographically, 1,928 were White, 571 were Black/African American, 161 were Hispanic, 15 were Asian, 21 were American Indian, 20 were classified as "Other," and 3 did not have a race identified.

Assumptions. Based on an analysis and sample of criminal histories conducted by the Judicial Department, the fiscal note estimates that 30 additional convictions per year will result from the bill. Based on the historical proportion of sentences for POWPO, the fiscal note estimates that 13 additional sentences to probation and 3 additional sentences to the Department of Corrections (DOC) will result from the bill. In CY 2021, the average DOC length of stay for a class 5 felony was 14.3 months with an average parole length of stay of 17.1 months once the offender is released from prison.

Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Revenue

Criminal fines and court fees. By modifying an existing felony offense, the bill will increase state revenue from criminal fines and court fees by a minimal amount beginning in FY 2023-24, credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. The fine penalty for a class 5 felony is \$1,000 to \$100,000. Additionally, court fees may be imposed on a case-by-case basis for a variety of court-related costs, such as probation supervision, drug surcharges, or late fees. Because the courts have the discretion of incarceration, imposing a fine, or both, a precise state revenue impact cannot be determined. Criminal fine and court fee revenue is subject to TABOR.

State Expenditures

Beginning in FY 2023-24, this bill increases General Fund expenditures by about \$58,000 and 0.6 FTE in FY 2023-24 and about \$146,000 and 0.7 FTE in FY 2024-25 in the Judicial Department and the DOC, as shown in Table 2 and discussed below.

**Table 2
Expenditures Under SB 23-022**

	FY 2023-24	FY 2024-25
Judicial Department		
Personal Services	\$39,447	\$49,950
Operating Expenses	\$1,570	\$1,865
Capital Outlay Costs	\$7,200	\$400
Centrally Appropriated Costs ¹	\$9,703	\$12,390
FTE – Personal Services	0.6 FTE	0.7 FTE
Judicial Subtotal	\$57,920	\$64,605
Department of Corrections (See Table 3 for detail)		
Bed Impact	-	\$81,304
DOC Subtotal	-	\$81,304
Total	\$57,920	\$145,909
Total FTE	0.6 FTE	0.7 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Judicial Department. Expenditures in the Judicial Department will increase to supervise more individuals on probation. In addition, workload in the trial courts and independent agencies that represent indigent persons will increase as described below.

- **Probation.** Based on the assumptions outlined above, the Probation Division will require 0.6 FTE in FY 2023-24, and 0.7 FTE 2024-25 to conduct additional pre-sentence reports and supervise additional offenders sentenced to probation. Due to these offenders already being convicted of a felony, the fiscal note assumes a more rigorous level of supervision and services. Costs include personal services, operating costs, capital outlay costs, and travel costs. Costs in FY 2023-24 are prorated by 3 months, assuming this is the time period in which individuals will be sentenced to probation.
- **Trial courts and independent agencies that represent indigent persons.** This bill will increase workload and costs for the trial courts in the Judicial Department to process additional criminal case filings. Workload and costs will increase in the agencies that provide representation to indigent persons, including the Office of the State Public Defender and the Office of Alternate Defense Counsel. Overall, it is assumed these impacts can be accomplished within existing appropriations. Should a change in funding be required for any agency or division with the Judicial Department, the fiscal note assumes it will be addressed through the annual budget process.

Department of Corrections. Section 2-2-701, C.R.S., requires Legislative Council Staff to provide information to the General Assembly on long-term costs for prison capital construction, operations, and parole for any bill that potentially increases periods of imprisonment in the Department of Corrections. These impacts are described below.

- **Prison and parole costs (five-year fiscal impact).** Based on the assumptions outlined above, this bill is expected to increase prison operating costs for the DOC by a total of about \$456,000 over the five-year period beginning in FY 2023-24, as shown in Table 3. The fiscal note assumes no prison operating impacts will occur in the first year due to the amount of time required for criminal filing, trial, disposition, and sentencing of each case. Once an offender is released from prison, the offender is assigned to parole. The parole impact is assumed to first occur in FY 2025-26.

**Table 3
Prison and Parole Operating Costs Under SB 23-022**

Fiscal Year	Prison ADP Impact	Prison Cost	Parole ADP Impact	Parole Cost	Total Costs
FY 2023-24	-	-	-	-	-
FY 2024-25	3.00	\$81,304	-	-	\$81,304
FY 2025-26	3.57	\$96,751	2.43	\$18,830	\$115,581
FY 2026-27	3.57	\$96,751	4.26	\$33,030	\$129,781
FY 2027-28	3.57	\$96,751	4.26	\$33,030	\$129,781
Total					\$456,447

- **Department of Corrections capital construction costs.** In addition to the five-year operating and parole impacts discussed above, Section 2-2-703, C.R.S., requires that the General Assembly consider increased capital construction costs for the DOC to house additional inmates. Based on the average per bed construction costs of previous prison facilities, capital construction costs of \$637,141 would be required to increase prison bed space in line with the estimated 3.57 increase in prison population under this bill. If the General Assembly determines that additional prison bed space is needed, this bill should include a transfer of General Fund to the Capital Construction Fund, to be reappropriated to the Corrections Expansion Reserve Fund. Money in the Corrections Expansion Reserve Fund is available for future DOC construction projects, which would be identified and funded through the annual budget process based on the state's overall prison needs.

Local Government

District attorneys. By changing the elements of POWPO, the bill will increase workload and costs for district attorneys to prosecute these cases. The exact impact to a particular local government will vary depending on the number of offenses committed within its jurisdiction. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2023-24, the bill requires an appropriation of \$48,217 and 0.6 FTE from the General Fund to the Judicial Department.

State and Local Government Contacts

Corrections
Judicial

District Attorneys
Public Safety

Information Technology