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Fiscal Note

Drafting Number:	LLS 24-0948	Date:	February 27, 2024
Prime Sponsors:	Sen. Gonzales	Bill Status:	Senate Judiciary
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Bill Topic: **INDETERMINATE SEX OFFENDER SENTENCING**

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

The bill removes indeterminate sentences for sex offenders to the Department of Corrections and requires these sentences to be determinate. The bill increases state expenditures in FY 2024-25 and will decrease state expenditures in future years.

Appropriation Summary: For FY 2024-25, the bill requires an appropriation of \$8,000 to the Department of Corrections.

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

**Table 1
State Fiscal Impacts Under SB 24-118**

		Budget Year FY 2024-25	Out Year FY 2025-26	Out Year FY 2038-39
Revenue		-	-	-
Expenditures	General Fund	\$8,000	-	(\$483,795)
Transfers		-	-	-
Other Budget	General Fund Reserve	\$1,200	-	(\$72,569)

Summary of Legislation

The bill removes indeterminate sentences to the Department of Corrections (DOC) for sex offenders and requires determinate sentences instead. The bill makes other changes to sentencing, venues for sex offender treatment, and parole eligibility, as described below.

Sex offender sentencing. Under current law, if a court sentences a sex offender to the DOC, the term of that sentence must be indeterminate, or not having a definitive end date. The bill removes indeterminate sentences for sex offenders to DOC and requires courts to set a determinate sentence, or a sentence with a definitive end date. The bill does require a term of indeterminate parole for sex offenders.

In addition, the bill raises the minimum amount of time a sex offender can be sentenced to the DOC. As a result, under the bill the DOC sentence for a sex offender is a determinate term of at least:

- the midpoint of the presumptive range for the felony classification the offender committed; and
- the upper limit of the presumptive range for the felony classification the offender committed if the crime was also a crime of violence.

The bill does not change the sentencing range for habitual child offenders against children but does require a determinate DOC sentence and an indeterminate term on parole. Finally, the bill removes specific sentencing for knowingly transmitting HIV to a victim.

Venue for sex offender treatment. The bill outlines where sex offenders must undergo treatment: either in the DOC or in a community setting. Sex offenders must undergo treatment in the DOC if the offender has been sentenced to the DOC; has been assessed as ready to engage in treatment; and is assessed as being high risk for sexual recidivism. If the offender is not identified as a high risk for sexual recidivism, the sex offender must begin treatment during the community placement or supervision phase of the sentence (i.e. parole or community corrections placement). These offenders may also receive treatment in the DOC if there is sufficient capacity. If an offender is at a high risk for sexual recidivism and is classified as a person who denies the sexual offense, the DOC must provide denier intervention services to the offender.

The DOC must monitor sex offender treatment capacity and must prioritize its resources for offenders who are a high risk for sexual recidivism.

Release to parole. The bill requires that sex offenders serve at least 75 percent of their determinate DOC sentence, inclusive of earned time, before becoming eligible for parole. The bill also requires the Parole Board to order any treatment in the community phase of the sex offender's sentence, unless the offender is assessed as high risk of sexual recidivism.

Revocation of parole. The bill requires community parole officers to make a recommendation as to whether further treatment in the DOC or in the community is necessary for the sex offender when recommending revocation of parole. The bill sets the maximum revocation as the time for mandatory parole in the current presumptive ranges.

Successfully progressed in treatment. The bill provides a definition of “successfully progressed in treatment.”

Clean up. The bill removes references to a report conducted by the Division of Criminal Justice, which was presented to the General Assembly in February 2024.

Background and Assumptions

The DOC reports that it receives an average of 82 new court commitments per year for indeterminate sex offender sentences. According to the Colorado Department of Public Safety (CDPS), 75 percent of indeterminate offenders currently fall into the average level of “lower” risk. Finally, the CDPS, in its January DOC population projection, estimates that an offender subject to the Lifetime Supervision Act spends about 18 years in the DOC and 15.6 years on parole.

Based on this data, this fiscal note assumes that:

- most sentences to the DOC already fall within the increased minimum of the presumptive range outlined in the bill; therefore, the bill will not result in longer sentences to the DOC;
- courts will sentence offenders to the current average length of stay (18 years); and
- based on the current risk level, 75 percent of offenders will be released at their 75 percent eligibility (13.5 years later).

State Expenditures

In FY 2024-25, the bill increases General Fund expenditures in the DOC by \$8,000. In future years, the bill will decrease expenditures in the DOC, and may increase expenditures in the CDPS, as described below.

Department of Corrections – budget year. In FY 2024-25, expenditures in the DOC will increase to update its time tracking software and to update the prioritization in the global referral list to reflect changes in the bill. This cost includes programming and testing the software. In addition, workload will increase to update internal policies to comply with the bill.

Department of Corrections – future years. Based on the assumptions outlined above, this bill will decrease prison operating costs for the DOC by an estimated total of \$7.8 million over the five-year period beginning in FY 2037-38, as shown in Table 2. This cost savings will be reduced by increased costs to provide treatment in the community to offenders on parole; however, these treatment costs have not been estimated.

To the extent sex offenders receive sentences from the court that differ from these assumptions, or vary due to earned time and Parole Board decision-making, costs savings may be realized on a different time frame than what is estimated below. To the extent offenders are sentenced to community corrections instead of parole, costs to the CDPS will increase—see the CDPS section below.

Table 2
Prison and Parole Operating Costs Under SB 24-118

Fiscal Year	Prison ADP Impact	Prison Cost	Parole ADP Impact	Parole Cost	Total Costs
FY 2037-38	-	-	-	-	-
FY 2038-39	(30.44)	(\$739,138)	30.44	\$255,343	(\$483,795)
FY 2039-40	(91.94)	(\$2,232,346)	91.94	\$771,186	(\$1,461,159)
FY 2040-41	(153.44)	(\$3,725,553)	153.44	\$1,287,030	(\$2,438,524)
FY 2041-42	(214.94)	(\$5,218,761)	214.94	\$1,802,873	(\$3,415,888)
Total					(\$7,799,366)

Department of Public Safety. To the extent additional offenders are sentenced to community corrections in the CDPS beginning in the 2030s, expenditures in the CDPS will increase. The exact increase in expenditures is dependent upon the number of parolees accepted by community correction boards; therefore, an exact increase in costs cannot be determined. The fiscal note assumes that if additional beds are needed, they will be funded through the annual budget process. For informational purposes, the current residential bed base rate without an incentive payment is \$69.01 and a sex offender bed without an incentive payment is \$103.01.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Effective Date

The bill takes effect October 1, 2024, and applies to offenses committed on or after this date.

State Appropriations

For FY 2024-25, the bill requires a General Fund appropriation of \$8,000 to the Department of Corrections.

State and Local Government Contacts

Corrections
Public Safety

District Attorneys

Judicial

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit the [General Assembly website](#).