

Virginia Criminal Sentencing Commission

# REPORT ON THE CALCULATION OF CORRECTIONS IMPACT STATEMENTS



2023

# Members of the Virginia Criminal Sentencing Commission

## APPOINTED BY THE CHIEF JUSTICE OF THE SUPREME COURT OF VIRGINIA AND CONFIRMED BY THE GENERAL ASSEMBLY

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# Commonwealth of Virginia

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## Supreme Court of Virginia Virginia Criminal Sentencing Commission

November 1, 2023

TO: The Honorable Janet D. Howell, Co-Chair  
The Honorable George L. Barker, Co-Chair  
Senate Committee on Finance and Appropriations

The Honorable Joseph D. Morrissey, Patron of Senate Bill 1335 (2023)

The Virginia Criminal Sentencing Commission is required by Virginia Code § 30-19.1:4 to prepare fiscal impact statements for legislation that could potentially increase the population in state adult correctional facilities in the Commonwealth. This provision also requires the Department of Planning and Budget, in conjunction with the Department of Juvenile Justice, to prepare an impact statement for legislation that may increase the number of individuals in state juvenile correctional facilities.

Senate Bill 1335, introduced during the 2023 General Assembly session, would have dramatically altered the way many impact statements are calculated. Ultimately, Senate Bill 1335 was passed by indefinitely with the understanding that the Chair of the Senate Finance and Appropriations Committee would send a letter referring the matter to the Sentencing Commission for study. The Commission received a letter from the Senate Clerk's Office, dated March 24, 2023, communicating such request.

This report is respectfully submitted for your consideration. Please contact the Sentencing Commission should you have questions regarding this report or any aspect of the Commission's work.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward L. Hogshire".

Edward L. Hogshire  
Circuit Judge (Ret.)  
Chair

c: Susan Clarke Schaar, Clerk of the Senate

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## Executive Summary

The Virginia Criminal Sentencing Commission is required by Virginia Code § 30-19.1:4 to prepare fiscal impact statements for legislation that could potentially increase the population in state adult correctional facilities. This provision also requires the Department of Planning and Budget (DPB), in conjunction with the Department of Juvenile Justice (DJJ), to prepare an impact statement for legislation that may increase the population of juveniles committed to the state.

Senate Bill 1335, introduced during the 2023 General Assembly, would have significantly changed the current requirements for preparing certain impact statements. Ultimately, Senate Bill 1335 was passed by indefinitely with the understanding that the Chair of the Senate Finance and Appropriations Committee would send a letter referring the matter to the Sentencing Commission for study. The Sentencing Commission received a letter from the Senate Clerk's Office, dated March 24, 2023, communicating this request. House Bill 1914, also introduced during the 2023 Session, was nearly identical to Senate Bill 1335; however, House Bill 1914 was not referred for study.

Current statutory requirements for corrections impact statements were adopted by the General Assembly in 2002. Pursuant to § 30-19.1:4, the corrections impact statements must provide estimated operating costs associated with any bill that would result in a net increase in the state adult correctional population (also known as the state prison population or state inmate population). Under this same provision, an impact statement must include estimated operating costs for any bill that would result in a net increase in the population committed to DJJ (these are juveniles committed to the custody of the state and typically held in the state's juvenile correctional facilities). Any impact statement required by § 30-19.1:4 also must include an analysis of the impact on local and regional jails, state and local pretrial and adult community probation agencies, and local juvenile detention facilities.

The Sentencing Commission uses a computer simulation model to estimate the additional number of inmates who will be in the state inmate population for each year of the six-year projection period, as well as any change in number of individuals held in local and regional jails each year, should the legislation be enacted. While the Sentencing Commission calculates the impact on adult corrections populations, the estimated impact on the confined juvenile populations is provided by Virginia's Department of Juvenile Justice<sup>1</sup> and, for the convenience of legislators, a combined statement is submitted to the General Assembly.

Pursuant to § 30-19.1:4, for each law enacted that would result in a net increase in the state inmate population or the population committed to DJJ, a one-year appropriation must be made. The appropriation amount must be equal to the estimated increase in operating costs for the year with the highest estimated operating costs during the six years following enactment of the

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<sup>1</sup> Although referenced in § 30-19.1:4, the Department of Planning and Budget has not played an active role in the development of impact statements for bills affecting the confined juvenile populations.

legislation.<sup>2</sup> Thus, § 30-19.1:4 requires an appropriation for one year of additional operating costs; it does not require an appropriation equivalent to the estimated increase in operating costs for all six years of the projection period. The identified appropriation amount must be printed on the bill itself.<sup>3</sup>

As required by § 30-19.1:4, if the agency preparing the impact statement does not have sufficient information to project the impact, the fiscal impact statement must state this, and the words "cannot be determined" shall be printed on the face of the bill. Since 2009, language in the Appropriation Act has mandated that, if the Sentencing Commission does not have sufficient information to estimate the impact, the Commission must assign a minimum fiscal impact of \$50,000 for the state prison impact (see Item 52 of Chapter 1 of the Acts of Assembly of 2023, Special Session I). In such instances, the \$50,000 minimum impact must be printed on the face of the bill and the provisions of § 30-19.1:4(H) apply, meaning an appropriation is required. In 2023, the Sentencing Commission could not quantify the impact for approximately 80% of the bills sent to the Commission for corrections impact statements. If insufficient data are available, the Sentencing Commission will nonetheless provide as much relevant information as possible in the impact statement. The goal is to provide legislators with supplemental information that may be useful as they consider the bill. It is important to note that, because the Sentencing Commission is not responsible for preparing the juvenile corrections impact statement, the \$50,000 minimum fiscal impact does not apply to bills for which the impact on the juvenile correctional system cannot be determined.

### **SENATE BILL 1335 AND HOUSE BILL 1914 (2023 GENERAL ASSEMBLY)**

Senate Bill 1335 and House Bill 1914 would have changed the current requirements for corrections impact statements, specifically for any bill that proposes a new felony offense. Under the proposals, the default state prison impact appropriation amount must be calculated by using the formula specified in the legislation. In essence, the formula generates the average number of prison admissions per offense defined in a particular felony class (e.g., average number of prison admissions associated with a Class 5 felony offense).<sup>4</sup> The legislation then specifies that the estimated number of affected offenders must be multiplied by twice the per capita cost for housing inmates as reported by the Virginia Department of Corrections (DOC). As proposed, this amount would replace the minimum fiscal impact of \$50,000 for bills proposing new felony offenses. The formula specified in Senate Bill 1335 and House Bill 1914 may not accurately reflect the rate at which a particular offense or type of offense would generate new prison admissions. Moreover, the proposed formula does not address sentence length or length-of-stay in the state prison population during the projection period. Thus, it does not account for the "stacking effect" associated with admissions to DOC who will serve multi-year sentences.

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<sup>2</sup> "Operating costs" means all costs other than capital outlay costs.

<sup>3</sup> While the estimated appropriation is printed on the face of the bill, it is not codified if the bill passes.

<sup>4</sup> Not all existing or proposed felonies fit within the felony classes established in the Code of Virginia (Class 1 through Class 6 felonies are defined in § 18.2-10). Approximately 20% of felonies are "unclassified" (i.e., the penalty ranges do not fall into the established felony classes). The nature of unclassified felonies varies considerably and maximum penalties for unclassified felonies range from one year to life.



## RECOMMENDED BEST PRACTICES

The Center on Budget and Policy Priorities (CBPP) has developed a list of recommended best practices for the preparation of fiscal impact statements or fiscal notes. Regarding corrections impact statements, Virginia follows nearly all of the best practices suggested by the CBPP, as shown in Figure 1 on the following page. Areas in which Virginia does not fully comply with CBPP's recommended best practices are discussed below.

CBPP recommends that states prepare impact statements or fiscal notes for all or substantially all bills. For corrections impact statements, Virginia follows this recommendation in part. While Virginia Code requires corrections impact statements for all bills that may increase the state prison population (increase costs), the CBPP recommends that states also produce impact statements for bills that may reduce costs for the state, such as a bill that would decrease the prison population.<sup>5</sup> Although not required by Code, the Sentencing Commission, when requested to do so, will prepare statements for bills that are expected to reduce the prison population.

CBPP recommends that states designate a nonpartisan agency to prepare impact statements. In a 2015 report, the CBPP indicates that fiscal impact statements in Virginia are prepared in an office of the Executive Branch that is involved in the development of the Governor's budget, which CBPP suggests may result in partisan fiscal notes.<sup>6</sup> In Virginia, corrections impact statements are not handled in that manner. By statute, Virginia's corrections impact statements are prepared by the Sentencing Commission, a judicial branch agency with no role in budget development. For this reason, Figure 1, which is specific to the process for corrections impact statements, indicates that Virginia fully complies with this recommendation.

Furthermore, CBPP recommends that states update impact projections as legislation is amended or otherwise modified. The CBPP, in its 2015 report, indicates that fiscal impact statements in Virginia are not updated when legislation is amended or modified.<sup>7</sup> That is not the case for corrections impact statements in Virginia. The Sentencing Commission updates the corrections impact statement whenever a bill is amended or modified as it proceeds through the legislative process. Figure 1 reflects that Virginia fully complies with this recommendation specifically in regards to corrections impact statements.

Finally, the CBPP recommends that states produce fiscal impact statements in a consistent format, following an established set of guidelines. The Sentencing Commission generates corrections impact statements for the General Assembly in a standardized format for all bills reviewed. Virginia's Sentencing Commission has developed internal documents with written procedures for calculating impacts; however, the Commission currently does not have an explanatory document available for outside parties, as suggested by the CBPP.









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<sup>5</sup> Center for Budget and Policy Priorities. (2012). *Improving Budget Analysis of State Criminal Justice Reforms: A Strategy for Better Outcomes and Saving Money*. Retrieved from <https://www.cbpp.org/research/improving-budget-analysis-of-state-criminal-justice-reforms-a-strategy-for-better-outcomes>

<sup>6</sup> Center on Budget and Policy Priorities. (2015). *Better Cost Estimates, Better Budgets: Improved Fiscal Notes Would Help States Make More Informed Decisions*. Retrieved from <https://www.cbpp.org/research/better-cost-estimates-better-budgets>

<sup>7</sup> Ibid.

**Figure 1**  
**Best Practices for Fiscal Impact Statements**  
**Recommended by the Center on Budget and Policy Priorities (CBPP)**

Recommended Practice	Does Virginia follow recommended practice for corrections impact statements?		
	No	In Part	Yes
Have statutory requirement or legislature rule for fiscal impact statements			
Prepare fiscal impact statements for all or substantially all bills *			
Designate a nonpartisan agency to prepare fiscal impact statements **			
Ensure agency preparing statements has appropriate level of expertise and ability to prepare analyses quickly during legislative session			
Project the long-term effects of legislation (4+ years)			
Update projection as legislation is amended or modified ***			
Make fiscal impact statements readily available online			
Produce fiscal impact statements in a consistent format, following an established set of guidelines****			

\* While Virginia Code requires corrections impact statements for all bills that may increase the state prison population (increase costs), the CBPP recommends that states also produce fiscal impact statements for bills that may reduce costs for the state, such as a bill that would decrease the prison population. Although not required by Code, the Sentencing Commission, when requested to do so, will prepare statements for bills that are expected to reduce the prison population.

\*\* In a 2015 report, the CBPP indicates that fiscal impact statements in Virginia are prepared in an office of the Executive Branch that is involved in the development of the Governor’s budget, which may result in partisan fiscal notes. In Virginia, **corrections impact statements** are prepared by the Sentencing Commission, a judicial branch agency with no role in budget development. Thus, Virginia complies with this recommendation.

\*\*\* The CBPP, in a 2015 report, indicates that fiscal impact statements in Virginia are not updated when legislation is amended or modified. That is not the case for corrections impact statements in Virginia. The Sentencing Commission updates the corrections impact statement whenever a bill is amended or modified.

\*\*\*\* While the Virginia Criminal Sentencing Commission has internal documents with written procedures, the Commission currently does not have an explanatory document available for outside parties, as suggested by the CBPP.

Sources:

Center for Budget and Policy Priorities. (2012). *Improving Budget Analysis of State Criminal Justice Reforms: A Strategy for Better Outcomes and Saving Money*. Retrieved from <https://www.cbpp.org/research/improving-budget-analysis-of-state-criminal-justice-reforms-a-strategy-for-better-outcomes>

Center on Budget and Policy Priorities. (2015). *Better Cost Estimates, Better Budgets: Improved Fiscal Notes Would Help States Make More Informed Decisions*. Retrieved from <https://www.cbpp.org/research/better-cost-estimates-better-budgets>

## MULTI-STATE STATE REVIEW

According to information provided by the National Conference of State Legislatures in 2021<sup>8</sup>, 17 states including Virginia have statutes that specifically require impact statements on legislation that would affect the corrections population.<sup>9</sup> In addition to the states listed in the National Conference of State Legislatures document, Louisiana, Maryland, and Pennsylvania were examined for the purposes of this report. The Sentencing Commission examined the requirements for each of the 19 other states and what each state typically includes in its corrections impact statements. Findings of the multi-state review are provided below.

- Virginia is not unique in having the state's Sentencing Commission prepare corrections impact statements, as sentencing commissions or councils in several states are designated for this function.
- Of the 19 states reviewed, the Sentencing Commission could find only one other state where an appropriation is required based on the amount specified in the impact statement. In addition to Virginia, Colorado has a statutory requirement to appropriate sufficient funds to cover increased costs. Colorado, however, recently suspended this requirement until July 1, 2025. In all the other states, the impact statement appears to be advisory only and there is no requirement that the legislature appropriate any funds.
- The Sentencing Commission could not identify another state among those reviewed with statutory requirements for impact statements related to the juvenile justice system.
- Unlike Virginia, most states examined include capital costs in the impact statements for at least some bills (e.g., if a bill is likely to increase the need for prison beds by a specified number or more).
- The majority of states examined prepare impact statements for bills that may decrease the prison population or otherwise reduce or offset costs. In Virginia, the Sentencing Commission and the Department of Juvenile Justice are currently required to produce impact statements only if the legislation could result in a net increase in the state prison or juvenile correctional center populations, thereby increasing costs. Although not required, the Sentencing Commission, when requested to do so, will produce impact statements for bills expected to reduce the state's prison population.
- The majority of states reviewed include other system costs, not just prison operating costs, in their impact statements (e.g., court caseload, prosecutor and/or indigent defense costs).
- The projection period used in Virginia (six years) is roughly in the middle of projection periods used in other states, which generally ranges between two and ten years.
- When the estimated impact cannot be quantified, the impact statements in other states vary. Some states, as in Virginia, simply note that the impact cannot be determined, with some including an explanation as to why. Other states base the impact estimate on some

<sup>8</sup> National Conference of State Legislatures. (2021). *Corrections Impact Statements*. Provided in email from Amanda Essex to Catie Robertson. 4 August 2023.

<sup>9</sup> Other than Virginia, these states are: Arkansas, Colorado, Connecticut, Illinois, Iowa, Kansas, Kentucky, Mississippi, Missouri, Nevada, North Carolina, Ohio, Oregon, Rhode Island, South Carolina and Texas.

sort of assumption (e.g., if 10 offenders were convicted of the proposed offense). In other states, the impact statement includes information as to the cost for each additional conviction or each additional prison admission.

- Of the 19 other states examined, the Sentencing Commission could not identify a state that specifies a formula for estimating impacts in statutory language, as proposed by Senate Bill 1335 and House Bill 1914.

**POSSIBLE OPTIONS FOR THE GENERAL ASSEMBLY**

Should the General Assembly desire to revise the requirements, process, or methods by which corrections impact statements are prepared in Virginia, there are alternatives that could be considered. A number of these are listed in the table below.

**Figure 2  
Possible Options for Modifying the Requirements, Process, or Methods  
Used for Corrections Impact Statements in Virginia**

<b>Current Requirement, Process, or Method</b>	<b>Possible Alternative</b>
Continue to designate the Virginia Criminal Sentencing Commission as the agency to complete corrections impact statements	Designate another agency
Continue to use the annual operating cost for state prisons calculated by DPB	Use an alternate source, such as DOC’s Annual Management Information Summary Report
Continue to require an appropriation that accounts for one year of increased operating costs	Require an appropriation that accounts for the increase in operating costs across all six years of the projection
Continue with the current method for estimating increases in operating costs	Specify a different method, such as using step costs (rather than average operating cost per inmate) to analyze staffing needs
Continue to require impact statements that account for increases in operating costs only	Specify that impact statements include capital costs, when applicable
Continue to require impact statements only for legislation that may increase the state prison population or the population committed to DJJ	Require impact statements for legislation that may reduce correctional populations, or require inclusion of potential offsets to costs
Continue to require impact statements that address impacts on adult and juvenile corrections populations, jails, community corrections, and juvenile detention facilities only	Specify that impact statements include other potential costs/savings (e.g., impact on the court system, prosecutors, or indigent defense)
Continue to specify a six-year projection period for corrections impact statements	Specify a different period for impact projections

**Figure 2**  
**Possible Options for Modifying the Requirements, Process, or Methods**  
**Used for Corrections Impact Statements in Virginia**

(continued)

Current Requirement, Process, or Method	Possible Alternative
Continue to specify a minimum fiscal impact of \$50,000 for impact statements for legislation for which there is insufficient data to calculate an impact	Specify a different approach when the impact cannot be determined (e.g., base the impact on an assumed number of affected individuals, or note costs associated with additional prison admission, etc.)
Continue to require the \$50,000 minimum fiscal impact currently required only for adult corrections impacts	Expand the current requirement such that the \$50,000 minimum fiscal impact also applies to bills that impact the population of juveniles committed to the state
Continue to require an appropriation based on the corrections impact statement	Suspend or repeal the appropriation requirement

## CONCLUSION

As requested by the Senate Finance and Appropriations Committee, the Sentencing Commission has examined matters related to Virginia's requirements for corrections impact statements and the processes and methods currently used. The Sentencing Commission also reviewed the changes proposed in Senate Bill 1335 and House Bill 1914. Virginia, at present, follows nearly all of the recommended best practices for fiscal impact statements established by the Center on Budget and Policy Priorities. Perhaps most unique about Virginia is the requirement for an appropriation in the amount specified in the corrections impact statement. Of the 19 other states examined, the Sentencing Commission could identify only one other state with an appropriation requirement; however, that state (Colorado) recently suspended that requirement. In reviewing the 19 other states, the Sentencing Commission found considerable variation in the types of information captured in corrections impact statements; however, most states included information beyond what is currently required in Virginia. As noted above, the Sentencing Commission could not identify a state with a formula for estimating impacts included in statutory language, as proposed by Senate Bill 1335 and House Bill 1914.

Should the General Assembly desire to change the current requirements, processes, or methods used for adult or juvenile corrections impact statements in Virginia, a number of options exist. Legislation to amend § 30-19.1:4 or the Appropriation Act would be required in most instances. The Sentencing Commission makes no specific recommendations regarding Virginia's corrections impact statements and will continue to produce statements per requirements specified by the Virginia General Assembly.

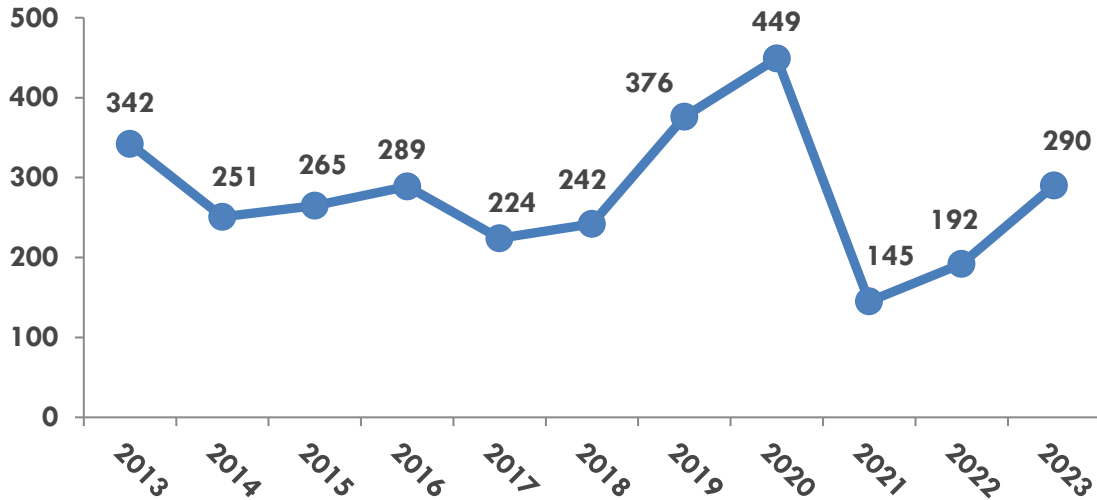
## Introduction

Since July 1, 2000, the Virginia Criminal Sentencing Commission has been statutorily required by § 30-19.1:4 to prepare fiscal impact statements for legislation that could potentially increase the population in state correctional facilities (also known as the state prison population or state inmate population) in the Commonwealth. This provision also requires the Department of Planning and Budget (DPB), in conjunction with the Department of Juvenile Justice (DJJ), to prepare an impact statement for legislation that may increase the population of juveniles committed to the state (these are juveniles committed to the custody of the state and typically held in the state's juvenile correctional facilities). The full text of this Code section can be found in Appendix A. Current statutory requirements for corrections impact statements were adopted by the General Assembly in 2002. Since 2009, language in the Appropriation Act has specified additional requirements pertaining to corrections impact statements (see Item 52 of Chapter 1 of the Acts of Assembly of 2023, Special Session I, in Appendix B).

Senate Bill 1335, introduced by Senator Joseph D. Morrissey during the 2023 General Assembly, would have significantly changed the current requirements for preparing certain impact statements in Virginia. Ultimately, Senate Bill 1335 was passed by indefinitely with the understanding that the Chair of the Senate Finance and Appropriations Committee would send a letter referring the matter to the Sentencing Commission for study. The Sentencing Commission received a letter from the Senate Clerk's Office, dated March 24, 2023, communicating this request (see Appendix C). House Bill 1914, also introduced during the 2023 Session, was nearly identical to Senate Bill 1335; however, a subcommittee of the House Public Safety Committee recommended laying House Bill 1914 on the table and it was not referred for study.

Figure 3 on the next page shows the number of corrections impact statements prepared by the Sentencing Commission each year since 2013. If a bill is amended or substitute versions are adopted, the Sentencing Commission will complete another impact statement that reflects the elements of the bill in its revised form. The General Assembly alternates between long and short sessions. Long sessions are held in even-numbered years and the state's biennial budget is adopted in those years. More impact analyses were completed for the 2020 General Assembly (Regular and Special Session) than in any other year. Considerably fewer bills were introduced during the 2021 and 2022 Sessions during the COVID-19 pandemic; therefore, fewer corrections impact statements were required during those years. In 2023, the number of corrections impact statements returned to a more typical level.

**Figure 3**  
**Corrections Impact Analyses Completed for the**  
**2013 - 2023 Sessions of the Virginia General Assembly**



Note: Multiple analyses may be performed on each bill if the bill is amended or substitute versions are adopted.

Source: Virginia Criminal Sentencing Commission, Legislative Information and Tracking System (LITS)

This report describes the current statutory requirements related to corrections impact statements in Virginia and discusses the proposed requirements offered in Senate Bill 1335 and House Bill 1914.<sup>10</sup> The Sentencing Commission's methodology for estimating impacts on the state inmate population and the process for preparing corrections impact statements are documented. The report identifies recommended best practices for states specifically for the preparation of fiscal impact statements and compares Virginia's current requirements and processes to those standards. The Sentencing Commission reviewed a number of other states with requirements for corrections impact statements, and this report provides a summary of those requirements and examples of impact statements produced in other states. Finally, should the General Assembly desire to revise the requirements, process, or methods by which corrections impact statements are prepared in Virginia, there are a number of options or alternatives that could be considered. These are discussed later in the report. The Sentencing Commission makes no specific recommendations regarding Virginia's corrections impact statements and will continue to produce statements per requirements specified by the Virginia General Assembly.

<sup>10</sup> This report does not address racial and ethnic impact statements for criminal justice legislation. Racial and ethnic impact statements were established by the 2021 General Assembly Special Session I (see § 30-19.1:13). These statements are prepared by the Joint Legislative Audit and Review Commission (JLARC) at the request of the Chair of the House Courts of Justice Committee or the Chair of the Senate Judiciary Committee. Each Chair may request up to three racial and ethnic impact statements during any regular session of the General Assembly. Thus, these statements are prepared only by request and only for a limited number of bills.

## Statutory and Other Requirements in Virginia

The General Assembly first adopted statutory requirements for corrections impact statements in 1993. Since July 1, 2000, the Virginia Criminal Sentencing Commission has been statutorily required by § 30-19.1:4 to prepare fiscal impact statements for legislation that could potentially increase the population in state correctional facilities in the Commonwealth. Current statutory requirements for corrections impact statements were adopted by the General Assembly in 2002. Pursuant to § 30-19.1:4, the corrections impact statements must present estimated operating costs associated with any bill that would result in a net increase in the state adult corrections (often referred to as the state prison population or state inmate population) population. Under this same provision, an impact statement must include estimated operating costs for any bill that would result in a net increase in the population of juveniles committed to DJJ. The full text of § 30-19.1:4 can be found in Appendix A.

The requirement for corrections impact statements includes, but is not limited to, proposals that:

- Add new crimes for which imprisonment or commitment is authorized;
- Expand the elements within the definition of an existing crime;
- Increase the periods of imprisonment or commitment authorized for existing crimes;
- Impose mandatory terms of imprisonment or commitment;
- Raise the classification of a crime from a misdemeanor to a felony; or
- Modify laws governing the release of prisoners or juveniles in such a way that time to be served will increase.

Any impact statement required by § 30-19.1:4 also must include an analysis of the impact on other criminal justice populations or resources. Specifically, the Code requires the statement to reflect the impact on local and regional jails, state and local pretrial and adult community probation agencies, and locally-operated juvenile detention facilities.

The Sentencing Commission uses a computer simulation model to estimate the additional number of inmates who will be in the state inmate population for each year of the six-year projection period, as well as any change in the number of individuals held in local and regional jails each year, should the legislation be enacted. The computer simulation model is described in the next section of this report. It is important to note that the impact on state and local community-based programs, such as probation, typically cannot be quantified due to limited availability of data. In addition, per § 30-19.1:4, corrections impact statements must detail any adjustments in Sentencing Guideline midpoints for the crime or crimes affected by the bill or its implementation that, in the opinion of the Commission, are necessary and appropriate.

While the Sentencing Commission calculates the impact on adult corrections populations, the estimated impact on the confined juvenile populations is provided by Virginia's DJJ and, for the



convenience of legislators, a combined statement is submitted to the General Assembly.<sup>11</sup> In most instances, during the legislative session, the projected impact and accompanying analysis of a bill is presented to the General Assembly within 24 to 48 hours after the Commission is notified of the proposed legislation. When requested, the Commission provides pertinent oral testimony to accompany the impact analysis.

If desired, the Chair of any standing committee of the House of Delegates or Senate may request that the Joint Legislative Audit and Review Commission (JLARC) review the Sentencing Commission's fiscal impact statements and provide a second assessment (see Item 36 of Chapter 1 of the Acts of Assembly of 2023, Special Session I). The number of requests for JLARC review of Sentencing Commission impact statements has ranged from zero to three per year.

Pursuant to § 30-19.1:4, for each law enacted which would result in a net increase in the state inmate population or the state confined juvenile population, a one-year appropriation must be made from the general fund. The appropriation amount must be equal to the estimated increase in operating costs for the year with the highest estimated operating costs during the six years following the effective date of the law.<sup>12</sup> That is to say, § 30-19.1:4 requires an appropriation for one year of additional operating costs; it does not require an appropriation equivalent to the estimated increase in operating costs for all six years of the projection period. The identified appropriation amount must be printed on the bill itself.<sup>13</sup> The current statute specifies that DPB provide the dollar figure for the operating cost per inmate for the Sentencing Commission to apply to its projection of additional prison beds needed.

If the Sentencing Commission or DJJ does not have sufficient information to project the impact, § 30-19.1:4 specifies that the words "cannot be determined" must be printed on the face of the bill. Furthermore, since 2009, language in the Appropriation Act has mandated that, if the Sentencing Commission does not have sufficient information to estimate the impact, the Commission must assign a minimum fiscal impact of \$50,000 for the state prison impact (see Item 52 of Chapter 1 of the Acts of Assembly of 2023, Special Session I, in Appendix B). In such instances, the \$50,000 minimum impact must be printed on the face of the bill, as well. The provisions of § 30-19.1:4 (H) apply, meaning that an appropriation must be made. In 2023, the Sentencing Commission could not quantify the impact for approximately 80% of the bills sent to the Commission for corrections impact statements. If insufficient data are available to estimate the impact, the Sentencing Commission will nonetheless provide as much relevant information as possible in the impact statement. The goal is to provide supplemental information that may be useful to legislators as they consider the bill. It is important to note that, because

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<sup>11</sup> Although referenced in § 30-19.1:4, the Department of Planning and Budget has not played an active role in developing impact statements for bills affecting the confined juvenile populations.

<sup>12</sup> "Operating costs" means all costs other than capital outlay costs.

<sup>13</sup> While the estimated appropriation is printed on the face of the bill, it is not codified if the bill passes the General Assembly.

the Sentencing Commission is not responsible for preparing juvenile corrections impact statements, the \$50,000 minimum fiscal impact does not apply to bills for which the impact on the juvenile corrections system cannot be determined.

The Sentencing Commission is directed to estimate the impact of legislation on correctional bed space needs, the overall jail population, and community corrections resources. If the legislation has other impacts (for example, court caseload, prosecutor and/or indigent defense costs), they are not included in the Sentencing Commission's impact statement, as they are outside the legislative mandate. Other agencies or organizations may provide separate statements to the General Assembly with estimates of those types of costs.

Appropriations required by § 30-19.1:4 are deposited into the Corrections Special Reserve Fund. The General Assembly established the Corrections Special Reserve Fund in 1996 as a nonreverting special fund on the books of the state Comptroller. The Fund consists of all moneys appropriated by the General Assembly under the provisions of § 30-19.1:4 and all interest thereon. Any moneys deposited in the Fund must remain in the Fund at the end of the biennium. Moneys in the Fund may be expended solely for capital expenses, including the cost of planning or preplanning studies that may be required to initiate capital outlay projects.

## Senate Bill 1335 and House Bill 1914 2023 General Assembly

Senate Bill 1335, introduced during the 2023 General Assembly, would have significantly altered the way many impact statements are calculated. Prior to the end of the 2023 Session, Senate Bill 1335 was passed by indefinitely with the understanding that the Chair of the Senate Finance and Appropriations Committee would send a letter referring the matter to the Sentencing Commission for study. The Sentencing Commission received a letter from the Senate Clerk's Office communicating this request. House Bill 1914, also introduced during the 2023 Session, was nearly identical to Senate Bill 1335; however, House Bill 1914 was not referred for study. See Appendix D for the full text of Senate Bill 1335.

For certain types of bills, such as those that propose new felony offenses or those that expand the definition of an existing felony, the Sentencing Commission often assigns the minimum fiscal impact of \$50,000. For most of these bills, data is insufficient or lacks sufficient detail to estimate the number of additional convictions that may result if the legislation were to be enacted. It is likely that Senate Bill 1335 and House Bill 1914 were intended to address this by requiring an estimate to be calculated using a prescribed formula when data are otherwise not available to calculate the potential impact. As introduced, Senate Bill 1335 and House Bill 1914 specified that:

*In the case of any bill that adds a new felony for which imprisonment or commitment is authorized, the estimated appropriation reflected in the fiscal impact statement shall be determined by multiplying twice the Department-wide per capita cost of housing inmates, as reported in the Virginia Department of Corrections Annual Management Information Summary Report published in that fiscal year previous to the General Assembly session for which such bill has been filed, by the estimated increase in persons convicted of and imprisoned for the new felony. The estimated increase in inmates shall be calculated using a fraction the numerator of which is 1 and the denominator of which is  $n$  multiplied by  $t$ , where " $n$ " equals the total number of felonies codified within the relevant class and " $t$ " equals the total number of persons convicted of and imprisoned for any felony within the relevant class during the fiscal year previous to the General Assembly session for which such bill has been filed.*

Senate Bill 1335 and House Bill 1914 would have changed the current requirements for corrections impact statements for bills that propose new felony offenses. In essence, the specified formula generates the average number of prison admissions per offense defined in a particular felony class (e.g., average number of prison admissions for a Class 5 felony offense defined in current Code). The legislation then specifies that the estimated number of affected offenders must be multiplied by twice the per capita cost for housing inmates as reported by the Virginia Department of Corrections. Under Senate Bill 1335 and House Bill 1914, this amount would replace the minimum fiscal impact of \$50,000 for bills proposing new felony offenses.

Following introduction of these bills, the Sentencing Commission was asked by DPB to provide comment on the proposed legislation. The Commission's comments on Senate Bill 1335 and House Bill 1914 are summarized below.

- The legislation requires the use of a single year of data and, as such, the estimates may be affected by any unusual fluctuations in the data from year to year. Moreover, the data for certain classes of felonies (e.g., Class 2 or Class 3 felonies) may not be sufficient in a single fiscal year, as there are not as many convictions for those offenses compared to other classes of felonies.
- Regarding the “n” (the total number of felony offenses defined within the relevant class) in the formula:
  - Offense types/groups (e.g., person, property, etc.) are not evenly distributed within a felony class. Certain types of offenses may dominate a felony class and would not be representative of all offenses in the same class.
  - Not all existing or proposed felonies fit within the felony classes established in the *Code of Virginia* (Class 1 through Class 6 felonies are defined in § 18.2-10). A review of all felonies defined in the Code revealed that 20% are “unclassified” felonies (i.e., the penalty ranges for those offenses do not fall into the established felony classes). The nature of unclassified felonies varies considerably and the maximum penalties for unclassified felonies range from one year to life.
- Regarding the “r” (the total number of persons convicted of and imprisoned for any felony within the relevant class) in the formula:
  - Within the same felony class, certain felony offenses result in a large number of prison admissions while other felony offenses in the same class may result in fewer prison admissions. The formula, which generates an average, may not accurately reflect the rate at which a particular offense or type of offense would generate new prison admissions. This may result in an over- or under-estimation of the actual impact.
- The formula results in an estimate only of the number of offenders who may be affected by the bill. It does not address sentence length or length-of-stay in the state prison population during the projection period. Thus, it does not account for the “stacking effect” associated with admissions to DOC who will serve multi-year sentences.
- The proposed approach does not take into account the time it takes for a change in law to reach its full impact. For a new felony, data suggest that it takes about two years for the full impact to be achieved.

- VCSC currently uses the operating cost per inmate provided by DPB (as required by § 30-19.1:4(A)). The legislation would require the use of the per-capita cost of housing inmates as reported in the Virginia Department of Corrections Annual Management Information Summary Report. The current and proposed sources of operating costs per inmate are not calculated in the same manner and do not provide the same cost figure.
- The basis for “multiplying twice” the DOC per capita cost of housing inmates is unclear. It is unlikely that the nominal price level (e.g., CPI, GDP deflator, or whichever measure is used) will increase by 100% within the next six fiscal years.

Although the proposed new language applies to “any bill that adds a new felony for which imprisonment or commitment<sup>14</sup> is authorized,” neither Senate Bill 1335 nor House Bill 1914 prescribe a formula applicable to the cost of additional juveniles being committed to DJJ.

Substitute versions of Senate Bill 1335 and House Bill 1914 were offered to the Senate Finance and Appropriations Committee and House Public Safety Committee (Subcommittee #2), respectively. The substitute versions addressed some of the Sentencing Commission’s concerns with the original legislation. Neither committee formally adopted the proposed substitutes.

The suggested substitute language specified that the new requirements would apply only to bills that would add a new felony or expand the definition of an existing felony when there is not sufficient information to project the impact. The substitutes would have only applied to bills for which the impact could not be determined and, therefore, would be assigned the minimum fiscal impact of \$50,000. The substitute language specified that DPB rather than DOC would provide the per capita cost estimate, which is consistent with current law. In addition, the substitute language modified the formula by requiring what amounts to an average of three years of data, rather than data from a single fiscal year. Otherwise, the formula was unchanged in the substitute bills. Thus, like the introduced version, the substitutes did not account for sentence length/length-of-stay for individuals who may be convicted under the proposed law. To address the unclassified felonies, the substitute versions specified that “felony offenses without a classification shall be grouped into the class of felonies where the maximum sentence matches the maximum sentence of the unclassified felony.” There are a number of felonies, however, for which the maximum sentence provided in Code does not align with any classed felony as defined in § 18.2-10. Thus, the substitute versions included language that stated, “The grouping of any unclassified felony where the maximum sentence does not match that of an established felony class will be determined by the Virginia Criminal Sentencing Commission.”

The House Public Safety Committee left House Bill 1914 within the Committee and took no further action on the bill. Ultimately, Senate Bill 1335 was passed by indefinitely by the Senate Finance and Appropriations Committee and a letter was sent referring the matter to the Sentencing Commission for study.

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<sup>14</sup> As used in § 30-19.1:4, “commitment” refers to the commitment of juveniles to the state’s Department of Juvenile Justice.

## Overview of Sentencing Commission Methodology

In order to meet the deadlines of legislative session, Sentencing Commission staff have access to confidential bill drafts prior to a bill being introduced. Prior to a bill's introduction, Commission staff are obligated to keep the nature of the bill confidential. When the Sentencing Commission receives a bill from the Division of Legislative Services (DLS) for a corrections impact statement, Commission staff must first determine if the bill's impact on the state prison population can be estimated. In other words, Commission staff must determine if sufficient data exist to quantify the bill's potential impact. Commission staff review all available data and often will contact other agencies to inquire as to the existence of data that could be useful in assessing the potential impact of the bill. Data sources examined by the Sentencing Commission most often include the Commission's Sentencing Guidelines (SG) data system and the Court Case Management Systems (CMS) maintained by the Office of the Executive Secretary of the Supreme Court of Virginia.

If the nature of the bill is such that no existing data can be used to quantify the impact, the Commission will assign the minimum fiscal impact of \$50,000 as required by the Appropriation Act (see Item 52 of Chapter 1 of the Acts of Assembly of 2023, Special Session I). For example, the Commission is often unable to estimate an impact for bills that create wholly new felony offenses or bills that add new elements to the definition of an existing offense. In such instances, data is often unavailable or lacking in sufficient detail to estimate the number of additional offenders who may be convicted due to enactment of the legislation. If insufficient data are available, the Commission will nonetheless provide as much relevant information as possible in the impact statement. The goal is to provide legislators with supplemental information that may be useful as they consider the bill. For example, for a bill that defines a new crime, the Commission will examine the most similar offense in existing Code that carries the same or similar penalty structure, identify the number of offenders convicted of such offense, and review sentencing patterns in those cases. An example of a recent corrections impact statement in this category can be found in Appendix E. Of the 290 corrections impact statements completed in 2023, 80% were assigned the minimum fiscal impact \$50,000 due to insufficient data.

### COMPUTER SIMULATION MODEL

If sufficient data do exist to quantify the impact, the Sentencing Commission will proceed with the analysis necessary to develop estimates. Commission staff analyze available data to identify (or approximate) the number of offenders likely to be affected by the proposed legislation and the impact on sentences and/or time served for those offenders. These and other data are used as inputs in a computer simulation model developed by the Sentencing Commission using an add-on feature of Excel called @Risk. Generally speaking, a simulation model is designed to model the way individuals move through a system. Specifically, the Sentencing Commission's simulation model compares recent experience or practice with an expected future scenario. The difference is the impact.

The simulation model requires a number of inputs in order to generate population projections. These include: the number of new individuals who will be convicted in the future, the type of most serious offense for those individuals, the historical sentencing patterns for individuals convicted of the offense (or the most similar offense), and the expected sentencing patterns under the new law. Commission staff also must determine if the new law will take full effect on the date of enactment (such as a change to sentence credits that felons may earn while incarcerated) or if the new law will apply only to individuals who commit the offense on or after the enactment date (such as a change to increase penalties for an existing crime). When the latter occurs, an individual must have committed the offense on or after the enactment date, be apprehended, and be tried before the new penalties apply. The simulation model takes this lag time, as well as court case processing time, into account. This aspect of the simulation model is also utilized for bills that have a delayed enactment date.

The simulation model does not assume that the same number of individuals will be convicted of the offense of interest during each year of the forecast horizon. The number of affected offenders may increase or decrease during the projection period. The rate of increase or decrease used in the simulation model is based on the official offender population forecasts. The Secretary of Public Safety and Homeland Security oversees the forecasting process and, as required by the Appropriation Act, presents updated offender population forecasts annually to the Governor and the General Assembly (see Appendix F for additional information about the Secretary's forecasting process). The forecasts are used for budget development, specifically to estimate overall operating expenses and future capital needs. For individuals sentenced to prison, the rate of increase or decrease used in the Commission's simulation model is based on the state-responsible new commitment forecasts approved by the Secretary's Offender Population Forecasting Policy Committee. Prison new commitment forecasts are disaggregated by the type of felony offense (violent, property/public order, and drug). The rates of increase or decrease in the new commitment forecasts are incorporated into the Sentencing Commission's simulation model and applied based on offense type. For individuals sentenced to jail, the rate of increase or decrease used in the Commission's simulation model is based on the local-responsible jail population forecast approved by the Secretary's Policy Committee.

Information regarding sentencing patterns is also needed. The Sentencing Commission uses at least two years of data to examine historical sentencing patterns. This reduces the likelihood that random swings in any one year will have a significant impact on the projection. If two years of data yields only a small number of cases, the Commission may use six or ten years of data to ensure that the sentencing distributions are stable and the influence of a small number of extreme cases is minimized. For bills that raise the statutory penalty structure, the Sentencing Commission will use, to approximate the future sentencing pattern, the sentencing pattern for the most similar offense already defined in the Code that has the same penalty structure as that proposed in the bill. For bills proposing mandatory minimum penalties, the Sentencing Commission utilizes the existing sentencing distribution and, for future sentences, assumes that any individual who received a sentence below the proposed mandatory minimum would receive exactly the mandatory minimum going forward; individuals who in the past received a sentence greater than the proposed mandatory minimum are presumed to be unaffected by the bill.

The Commission's simulation model also accounts for the rate at which offenders may earn sentence credits towards the reduction of their overall time served. For individuals sentenced to a state-responsible prison term (a sentence of one year or more), the Sentencing Commission receives information from DOC regarding the rates at which inmates are earning sentence credits (per § 53.1-202.3) disaggregated across 19 offense categories. The earning rates are based on the population confined on a given date. The simulation model assumes that state inmates in each offense group will earn at those current rates throughout their prison terms. Because a similar distribution of earned sentence credits is not available for local-responsible jail offenders, the Sentencing Commission assumes that local-responsible felons (felons who receive a sentence of 12 months or less) will serve a minimum of 90% of the active sentence ordered by the court for an offense listed in § 53.1-202.3 (typically these are violent offenses) and 68% for all other offenses. Misdemeanor offenders sentenced to jail are assumed to serve 50% of the active sentence ordered by the court (based on § 53.1-116, which states that misdemeanants sentenced to 12 months or less may earn good conduct credit at a rate of one day for every day served).

As required by § 30-19.1:4, the Commission identifies the highest single-year prison population increase during the six years following enactment. That figure is then multiplied by the cost of holding a prison inmate for a year (operating costs, excluding capital outlay costs). By statute, the annualized operating cost per inmate is provided by DPB. For the upcoming 2024 General Assembly, that annual operating cost figure is \$52,894. The resulting figure is reported in the impact statement and, per § 30-19.1:4, must be printed on the bill itself.

The simulation model is also designed to generate the impact of legislation on the local-responsible jail population. The operating cost per jail bed is based on the Compensation Board's Jail Cost Report for the most recent available year. The annualized jail operating cost is calculated by using the overall daily expenditure cost per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments. According to the most recent Jail Cost Report, released in November 2022, the average statewide local-responsible jail operating cost per inmate was \$63.35 per day, or \$23,139 per year.

All assumptions made for the purposes of calculating a fiscal impact are described in detail at the end of each corrections impact statement submitted to the General Assembly.

As an example, a recent corrections impact statement with a calculable impact is provided in Appendix G.



## **COMBINED IMPACT STATEMENTS AND SUBSEQUENT ANALYSES**

As noted in an earlier section of this report, DJJ provides fiscal impact estimates for any bill that would result in a net increase in the population of juveniles committed to the state and the impact of a bill on the number of juveniles confined in locally-operated detention homes. DJJ provides this information to the Sentencing Commission and a combined statement is submitted to the General Assembly. If a bill is later amended or substitute versions are adopted, the Sentencing Commission will complete another impact statement that reflects the elements of the bill in its revised form.

## Recommended Best Practices Related to Fiscal Impact Statements

According to the Center on Budget and Policy Priorities (CBPP), “good fiscal notes promote an open and rational policy making process.”<sup>15</sup> CBPP found that, while nearly all states produce some sort of cost estimates for legislation, in many states the estimates are not very useful.<sup>16</sup> Reasons for this vary. To assist states, CBPP has developed a number of recommended best practices regarding the preparation of fiscal notes or fiscal impact statements. The CBPP recommendations are discussed below.

### CBPP RECOMMENDED BEST PRACTICES<sup>17</sup>

#### **States should have a statutory requirement or legislature rule for fiscal impact statements.**

Laws, rules, and written procedures ensure that comprehensive fiscal notes are prepared for all appropriate legislative proposals. CBPP determined that, while all states except California and Hawaii have some statutory or legislative rule relating to fiscal notes, some are quite limited. *In Virginia, requirements for corrections impact statements are specified in § 30-19.1:4, with additional requirements included in the Appropriation Act.*

**States should routinely prepare fiscal notes for all or substantially all bills.** Fiscal notes provide policy makers with necessary information to know the costs of any bill that will affect revenue or spending. According to the CBPP, such information assists policy makers in determining if the legislation is affordable in its current form and helps in prioritizing initiatives. *In Virginia, corrections impact statements are required for any bill that would result in a net increase in the state adult corrections (i.e., the state prison population) or in the population committed to the Department of Juvenile Justice.* CBPP recommends, however, that states also produce impact statements for bills that may reduce costs for the state, such as a bill that would decrease the prison population. CBPP suggests that generating corrections impact statements for bills that

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<sup>15</sup> Center for Budget and Policy Priorities. (2012). *Improving Budget Analysis of State Criminal Justice Reforms: A Strategy for Better Outcomes and Saving Money*. Retrieved from <https://www.cbpp.org/research/improving-budget-analysis-of-state-criminal-justice-reforms-a-strategy-for-better-outcomes>

<sup>16</sup> Ibid.

<sup>17</sup> All of the best practices discussed in this section can be found in the following two documents:

Center for Budget and Policy Priorities. (2012). *Improving Budget Analysis of State Criminal Justice Reforms: A Strategy for Better Outcomes and Saving Money*. Retrieved from <https://www.cbpp.org/research/improving-budget-analysis-of-state-criminal-justice-reforms-a-strategy-for-better-outcomes>

Center on Budget and Policy Priorities. (2015). *Better Cost Estimates, Better Budgets: Improved Fiscal Notes Would Help States Make More Informed Decisions*. Retrieved from <https://www.cbpp.org/research/better-cost-estimates-better-budgets>

result in either costs or savings introduces “more rationality into criminal justice policymaking.”<sup>18</sup> Although not required by Code, the Sentencing Commission, when requested to do so, will prepare statements for bills that are expected to reduce the prison population.

**States should designate a nonpartisan agency to prepare fiscal impact statements.**

According to CBPP, the estimates that a nonpartisan office prepares without political pressure will engender more confidence. Most states (33 and the District of Columbia) assign the task of preparing fiscal notes to a nonpartisan legislative fiscal office or other nonpartisan entity. Other states do not, which, according to CBPP, allows for the possibility that the fiscal notes will be affected by partisanship or perceived partisanship. For example, in some states, fiscal notes are prepared in an office of the executive branch that also is involved in the development of the governor’s budget. *In Virginia, corrections impact statements are prepared by the Sentencing Commission, a nonpartisan agency in the judicial branch of government.* The Sentencing Commission has no role in budget development and is unaffected by decisions regarding funding for corrections legislation.<sup>19</sup>

**States should ensure the agency preparing statements has the appropriate level of expertise and the ability to prepare analyses quickly during the legislative session.** CBPP sees high quality fiscal impact statements as well worth the effort and critical to a well-functioning legislative process. In Virginia, the Sentencing Commission has access to a wide array of criminal justice data that can be utilized in the preparation of corrections impact statements. *Virginia’s Sentencing Commission maintains a staff of highly-qualified and experienced research analysts, as well as a data scientist and a chief methodologist.* During the legislative session, Commission staff provide the projected impact and accompanying analysis of a bill to the General Assembly within 24 to 48 hours after the Commission is notified of the proposed legislation, amendment, or substitute version.

**States should project the long-term effects of legislation.** CBPP recommends that fiscal notes reflect the cost of the proposed legislation when it reaches full effect, which may fall beyond the one or two fiscal years immediately following enactment. CBPP found that twelve states and the District of Columbia routinely include four or more years in their fiscal notes. *In Virginia, § 30-19.1:4 requires a six-year projection for corrections impact statements.*

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<sup>18</sup> Center for Budget and Policy Priorities. (2012). *Improving Budget Analysis of State Criminal Justice Reforms: A Strategy for Better Outcomes and Saving Money*. Retrieved from <https://www.cbpp.org/research/improving-budget-analysis-of-state-criminal-justice-reforms-a-strategy-for-better-outcomes>

<sup>19</sup> The Center on Budget and Policy Priorities states in its 2015 report that fiscal impact statements in Virginia are prepared in an office of the Executive Branch that is involved in the development of the Governor’s budget, which may result in partisan fiscal notes. In Virginia, **corrections impact statements** are prepared by the Virginia Criminal Sentencing Commission, a judicial branch agency with no role in budget development.

**States should update the projection when legislation is amended or modified.** Proposed legislation is often amended or modified as it goes through the legislative process. According to CBPP, if a fiscal note is not updated for material changes in a bill, the note no longer serves its purpose. CBPP found that only slightly more than half the states (27 states and the District of Columbia) regularly revise fiscal notes for changes in proposed legislation. *In Virginia, if a bill is amended or substitute versions are adopted, the Sentencing Commission will complete another impact statement that reflects the elements of the bill in its revised form.*<sup>20</sup>

**States should make fiscal impact statements readily available online.** The vast majority of states post their fiscal notes on the Internet in a manner that is readily accessible. This gives all policymakers easy access to valuable information. CBPP suggests that it allows the budget process to be more open and transparent. According to CBPP, it enables other interested parties to weigh in, in a more informed manner, on the legislative process.<sup>21</sup> *In Virginia, all corrections impact statements prepared by the Sentencing Commission are posted on the same web page as the bill itself.*

**States should produce fiscal impact statements in a consistent format, following an established set of guidelines.** CBPP recommends that the agency primarily responsible for fiscal notes should produce a written set of guidelines and provide training before each legislative session for agency personnel who provide background data and analysis. *In Virginia, the Sentencing Commission generates corrections impact statements for the General Assembly in a standardized format for all bills reviewed. The Sentencing Commission has developed internal documents with written procedures for calculating impacts; however, the Commission currently does not have an explanatory document available for outside parties, as suggested by the CBPP.* CBPP identifies four states (Maine, Texas, Washington, and Wisconsin) that have particularly thorough guides that can serve as a model for other states.

## SENTENCING COMMISSION FINDING

Regarding corrections impact statements, Virginia follows nearly all of the best practices suggested by the CBPP. Areas in which Virginia does not fully comply with CBPP's recommended best practices were discussed above. Figure 4 on the following page provides a summary of CBPP recommended best practices and the degree to which Virginia's corrections impact process meets these standards.

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<sup>20</sup> The Center on Budget and Policy Priorities (CBPP) indicates in its 2015 report that fiscal impact statements in Virginia are not updated when legislation is amended or modified. That is not the case for corrections impact statements in Virginia. The Sentencing Commission updates the corrections impact statement whenever a bill is amended or modified.

<sup>21</sup> Center on Budget and Policy Priorities. (2015). *Better Cost Estimates, Better Budgets: Improved Fiscal Notes Would Help States Make More Informed Decisions*. Retrieved from <https://www.cbpp.org/research/better-cost-estimates-better-budgets>

**Figure 4**  
**Best Practices for Fiscal Impact Statements**  
**Recommended by the Center on Budget and Policy Priorities (CBPP)**

Recommended Practice	Does Virginia follow recommended practice for corrections impact statements?		
	No	In Part	Yes
Have statutory requirement or legislature rule for fiscal impact statements			
Prepare fiscal impact statements for all or substantially all bills *			
Designate a nonpartisan agency to prepare fiscal impact statements **			
Ensure agency preparing statements has appropriate level of expertise and ability to prepare analyses quickly during legislative session			
Project the long-term effects of legislation (4+ years)			
Update projection as legislation is amended or modified ***			
Make fiscal impact statements readily available online			
Produce fiscal impact statements in a consistent format, following an established set of guidelines****			

\* While Virginia Code requires corrections impact statements for all bills that may increase the state prison population (increase costs), the CBPP recommends that states also produce fiscal impact statements for bills that may reduce costs for the state, such as a bill that would decrease the prison population. Although not required by Code, the Sentencing Commission, when requested to do so, will prepare statements for bills that are expected to reduce the prison population.

\*\* In a 2015 report, the CBPP indicates that fiscal impact statements in Virginia are prepared in an office of the Executive Branch that is involved in the development of the Governor's budget, which may result in partisan fiscal notes. In Virginia, **corrections impact statements** are prepared by the Sentencing Commission, a judicial branch agency with no role in budget development. Thus, Virginia complies with this recommendation.

\*\*\* The CBPP, in a 2015 report, indicates that fiscal impact statements in Virginia are not updated when legislation is amended or modified. That is not the case for corrections impact statements in Virginia. The Sentencing Commission updates the corrections impact statement whenever a bill is amended or modified.

\*\*\*\* While the Virginia Criminal Sentencing Commission has internal documents with written procedures, the Commission currently does not have an explanatory document available for outside parties, as suggested by the CBPP.

Sources:

Center for Budget and Policy Priorities. (2012). *Improving Budget Analysis of State Criminal Justice Reforms: A Strategy for Better Outcomes and Saving Money*. Retrieved from <https://www.cbpp.org/research/improving-budget-analysis-of-state-criminal-justice-reforms-a-strategy-for-better-outcomes>

Center on Budget and Policy Priorities. (2015). *Better Cost Estimates, Better Budgets: Improved Fiscal Notes Would Help States Make More Informed Decisions*. Retrieved from <https://www.cbpp.org/research/better-cost-estimates-better-budgets>

## Corrections Impact Statements in Other States

According to information provided by the National Conference of State Legislatures (NCSL) in 2021, Virginia and 16 other states have statutes that specifically require impact statements on legislation that would affect the correctional population.<sup>22</sup> Other than Virginia, these states are: Arkansas, Colorado, Connecticut, Illinois, Iowa, Kansas, Kentucky, Mississippi, Missouri, Nevada, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, and Texas. In South Dakota, statutory requirements for corrections impact statements were repealed in 2023.

In addition to the states listed in the NCSL, selected other states were examined for the purposes of this report. These states are: Louisiana, Maryland, and Pennsylvania. Louisiana and Maryland were selected because the Center for Budget and Policy Priorities identified those states as meeting all of the recommended best practices for fiscal impact statements (three other states meeting all of the standards were already included because they are listed in the NCSL document). Pennsylvania was selected because that state is known to have considerable criminal justice data available for analytical purposes.

The specific requirements or practices for corrections impact statements vary from state to state, as discussed below. The types of bills for which a statement is prepared, and how those statements are prepared, also vary considerably. In some states, corrections impact statements are produced on all or substantially all bills that affect the corrections agency. In other states, impact statements are prepared only when requested by a legislative committee chair or legislative personnel. These variations are discussed in greater detail in the state-by-state review later in this section. The pages that follow provide a summary of state responses to key questions posed by the Sentencing Commission.

Note: Other than the agency responsible for preparing the statements, insufficient information is available for Connecticut and Louisiana to fully report on the requirements and processes for preparing corrections impact statements in those states.

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<sup>22</sup> National Conference of State Legislatures. (2021). *Corrections Impact Statements*. Provided in email from Amanda Essex to Catie Robertson. 4 August 2023.

### What agency is responsible for preparing corrections impact statements?

Corrections agency	Kentucky <sup>23</sup> , Mississippi, Missouri, Ohio, Rhode Island
Legislative agency	Colorado, Iowa, Louisiana, Maryland <sup>24</sup> , Nevada <sup>25</sup> , North Carolina <sup>26</sup> , Oregon <sup>27</sup> , South Carolina <sup>28</sup> , Texas
Sentencing commission/council	Arkansas, Connecticut, Illinois <sup>29</sup> , Kansas <sup>30</sup> , Pennsylvania <sup>31</sup> , <b>VIRGINIA</b>

### Does the statement reflect corrections operating costs only, or does the statement include both operating and capital costs?

Operating costs only	Iowa, Mississippi, Nevada, Oregon, <b>VIRGINIA</b>
Operating and capital costs	Arkansas <sup>32</sup> , Colorado, Kansas, Kentucky, Illinois, <sup>33</sup> Maryland, Missouri, North Carolina, Pennsylvania, Rhode Island, South Carolina, Texas
Unclear	Ohio

<sup>23</sup> The Kentucky Department of Corrections prepares the statement with assistance from other state agencies as deemed necessary.

<sup>24</sup> In Maryland, the Department of Legislative Services will request information from affected agencies.

<sup>25</sup> In Nevada, the legislature's Fiscal Analysis Division consults with agencies and receives projections from agencies affected by the legislation.

<sup>26</sup> In North Carolina, the legislature's Fiscal Research Division is required to consult with the North Carolina Sentencing Policy and Advisory Commission.

<sup>27</sup> In Oregon, the Legislative Fiscal Office prepares the statement but staff solicits input from affected agencies.

<sup>28</sup> In South Carolina, the legislature's Revenue and Fiscal Affairs Office prepares the statement with input from affected agencies.

<sup>29</sup> Besides the Illinois Sentencing Policy and Advisory Council, the Department of Corrections may also produce an impact statement.

<sup>30</sup> The Kansas Sentencing Commission produces the prison bed space impact projection that other agencies then use to assign the fiscal impact.

<sup>31</sup> For the majority of bills, the Pennsylvania Commission on Sentencing projects the impact on correctional populations, and the Department of Corrections prepares information on the associated costs.

<sup>32</sup> In Arkansas, if staff determines that the estimated increase in population cannot be absorbed as part of normal growth and will require new prison beds, construction costs are provided by the Department of Corrections in a separate statement.

<sup>33</sup> In Illinois, if the estimated increase in the corrections population is large enough, the statement will include capital costs.

**Does the statement include only corrections costs, or are savings also included?**

Corrections costs only	Arkansas <sup>34</sup> , Nevada, North Carolina, <b>VIRGINIA</b>
Corrections costs and savings	Colorado, Illinois, Iowa, Kansas, Kentucky, Maryland, Mississippi, Missouri, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas

**What other costs or savings are typically included in the impact statement?**

Corrections impact only	Missouri <sup>35</sup> , Ohio <sup>36</sup> , Rhode Island
Court system impact (e.g., judges, clerks, indigent defense)	Colorado, Illinois, Iowa, Kansas <sup>37</sup> , Maryland, North Carolina, Oregon, South Carolina, Texas
Community corrections impact	Arkansas <sup>38</sup> , Colorado, Illinois, Iowa, Kentucky, Mississippi, North Carolina, Oregon, Pennsylvania, South Carolina, Texas, <b>VIRGINIA</b>
Jail/jail reimbursement impact	Colorado, Illinois, Kentucky, Oregon, South Carolina, Texas, <b>VIRGINIA</b>
Prosecutor impact	Colorado, Maryland, North Carolina, Oregon, South Carolina
Treatment/program impact	Kentucky
Local government impact	Maryland, Oregon, South Carolina, Texas
Victimization impact	Illinois
Unclear	Nevada <sup>39</sup>

<sup>34</sup> In Arkansas, impact statements identify potential averted costs that may offset some of the cost of a bill. For bills which will result in correctional savings, such as a bill to reduce criminal penalties, staff will pull data for informational purposes but will not prepare a full fiscal impact assessment.

<sup>35</sup> Agencies other than the Missouri Department of Corrections provide projected impacts separately.

<sup>36</sup> In Ohio, impacts on other affected entities may be included in a statement prepared by the Legislative Service Commission. These may include impacts on the court system and county criminal justice systems.

<sup>37</sup> In Kansas, the court system may provide a separate impact statement.

<sup>38</sup> In Arkansas, corrections impact statements will include the offset for any averted supervision costs or averted cost of care for parole violators.

<sup>39</sup> In Nevada, affected agencies will submit a separate fiscal note.



**How long of a projection is required/used?**

Three years	Mississippi <sup>40</sup> , Rhode Island
Five years	Colorado, Iowa, Maryland, Nevada, North Carolina, Pennsylvania, Texas
Six years	<b>VIRGINIA</b>
Ten years	Arkansas, Kansas, Mississippi, Missouri, Oregon
More than ten years	Illinois
Unclear	Kentucky, Ohio, South Carolina <sup>41</sup>

**What is required if the impact cannot be determined?**

“Cannot be determined” is indicated	Arkansas, Illinois, Maryland, Mississippi, Missouri, North Carolina, Pennsylvania, Texas, <b>VIRGINIA</b>
Assumption regarding number of affected offenders may be made	Colorado, Kansas, Kentucky, Nevada, Oregon, Rhode Island
Statement shows cost of one conviction or cost of incarcerating one offender	Iowa, Ohio, South Carolina

**Does the state require an appropriation based on the impact statement?**

No, statement is advisory only	Arkansas, Illinois, Iowa, Kansas, Kentucky, Maryland, Mississippi, Missouri, Nevada, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas
Yes, appropriation must be made	Colorado – In 2022, this requirement was suspended until July 1, 2025 <sup>42</sup> <b>VIRGINIA</b>

<sup>40</sup> The Mississippi Department of Corrections projects out three years but, by statute, the projection period can be up to 10 years.

<sup>41</sup> In South Carolina, the projection period is not specified in statute but is determined on a bill-by-bill basis.

<sup>42</sup> According to Legislative Council Staff in Colorado, this bill was recommended by the Joint Budget Committee in response to concerns that tracking statutory appropriations and reconciling them with annual prison population forecasts and appropriations through the budget was difficult and created unnecessary work.

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**Is the methodology or formula for calculating corrections impact prescribed in statute?**

No

All states examined

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Note: Other than the agency responsible for preparing the statements, insufficient information is available for Connecticut and Louisiana to fully report on the requirements and processes for preparing corrections impact statements in those states.

## Arkansas

### Agency/organization that prepares corrections impact statements:

Arkansas Sentencing Commission

### Requirement:

The Arkansas Sentencing Commission must develop a research and analysis system to determine the feasibility, impact on resources, and budget consequences of any proposed or existing legislation affecting sentence length and submit a report to the General Assembly prior to adoption of any such legislation.

Arkansas Code § 16-90-802 (d)(6)

### Types of bills for which impact statement is prepared:

Bills that create or modify a criminal penalty or affect statutes located in Title 5 (Criminal Offenses) or 16 (Practice, Procedure and Courts) of the Arkansas Code Annotated.

### Procedures or methods used in preparation of impact statement:

Fiscal impacts are classified as cannot be determined, a minimal impact, or a potential medium or major impact. The impact of a proposal is minimal if the bill is projected to affect fewer than ten offenders per year. Once it is established that a bill is likely to have either a medium or a major impact, staff will engage with the contractor who provides the Prison Population Projections for the State of Arkansas to develop a preliminary impact estimate. For the most recent legislative session, this contractor was JFA Associates, Denver, CO. Commission staff advise the contractor in the development of an admissions file based on existing data. This file represents the number of offenders likely to be affected by a bill in the future. Staff and the contractor will coordinate to determine the assumed increase in sentence of length-of-stay. The contractor will then input the admissions file and assumed changes in sentence and/or length-of-stay into a microsimulation model (the Wizard Microsimulation Projection Model) that tracks offender movement through the correctional system to determine the annual bedspace impact. The contractor provides the results to staff.

After the preliminary impact is determined, staff analyze the impact for potential reductions. Potential reductions may include an offset for any averted supervision costs or averted cost of care for parole violators. If staff determines that reductions need to be made, the contractor will conduct additional simulation model runs. Staff coordinate with other entities as appropriate when determining offset amounts. Staff do not make reductions to account for changes in offender behavior or potential changes in sentencing practice. If the final bedspace impact does not reach the threshold of 10 beds per year, the bill will be re-classified as having a minimal impact.

If the bedspace impact remains over the threshold of 10 beds per year, staff will consult with the Secretary of Corrections, or his or her designee, on whether, in his or her opinion, the increase in population can be absorbed as a part of normal growth, or whether the proposed bill will require that new beds be constructed. If staff determines that the increase

in population can be absorbed as part of normal growth, the bill will be classified as having a medium impact. If staff determines that the increase in population will require that new prison beds will need to be constructed due to the proposed bill, the bill will be classified as having a major impact. Construction costs are provided by the Department of Corrections and are included in the fiscal impact assessment.

For bills that may result in correctional savings, staff will pull data for informational purposes, but will not prepare a full fiscal impact assessment. Examples of bills which may result in correctional savings include bills which decriminalize conduct or lessen criminal penalties.

**What is included in the impact statement:**

- |  |  |
|--|--|
| <input type="checkbox"/> Operating costs only (no capital costs)                     | <input checked="" type="checkbox"/> Community corrections impact |
| <input checked="" type="checkbox"/> Operating costs and capital costs, if applicable | <input type="checkbox"/> Jail/jail reimbursement impact          |
| <input checked="" type="checkbox"/> Corrections costs only (not savings)             | <input type="checkbox"/> Treatment/program impact                |
| <input type="checkbox"/> Corrections costs and savings                               | <input type="checkbox"/> Local government impact                 |
| <input type="checkbox"/> Court system impact (judges, clerks, indigent defense)      | <input type="checkbox"/> Victimization impact                    |
| <input type="checkbox"/> Prosecutor impact   | <input type="checkbox"/> Unclear                                 |

**How long of a projection is required:**

10 years

**What is required if the impact cannot be determined:**

“Cannot be determined” is indicated on the statement.

**Impact statement is binding or requires appropriation:**

No, impact statement is advisory only.

**Source(s):**

Arkansas Code Annotated § 16-90-802 (d)(6)

Arkansas Sentencing Commission. (2022). *Impact Assessment Procedures, effective 09/21/2022*. Retrieved from <https://doc.arkansas.gov/wp-content/uploads/2022/12/2022-09-21-impact-assessment-procedures.pdf>

**An example of an impact statement from Arkansas can be found in Appendix H.**

## Colorado

### **Agency/organization that prepares corrections impact statements:**

Colorado Legislative Council staff

### **Requirement:**

By law, the General Assembly must provide by rule for legislative service agency review of the fiscal impact of legislation. If a legislative measure creates a new criminal offense, increases or decreases the crime classification of an existing criminal offense, or changes an element of an existing offense that creates a new factual basis for the offense, a fiscal note must be prepared. Colorado Legislative Council staff prepare an independent, nonpartisan assessment of legislation.

The Legislative Director of Research is responsible for reviewing any bill that affects criminal sentencing and that may result in a net increase or a net decrease in periods of imprisonment in state correctional facilities for the purpose of providing information to the General Assembly on the long-term fiscal impact which may result from the passage of the bill, including the increased capital construction costs and increased operating costs for the first five fiscal years following passage.

Colorado Revised Statutes (C.R.S.) Section 2-2-322 and Section 2-3-304

### **Types of bills for which impact statement is prepared:**

A fiscal note is required if a legislative measure creates a new criminal offense, increases or decreases the crime classification of an existing criminal offense, or changes an element of an existing offense that creates a new factual basis for the offense.

### **Procedures or methods used in preparation of impact statement:**

For bills with felony offenses, potential impacts on the Department of Corrections are identified. These include prison operations, capital construction, and parole costs, as well as county jail reimbursement impacts, where applicable. Potential impacts are assessed by analyzing comparable crime sentencing data obtained from the Judicial Department. If sentencing data indicate a prevalence of the crime, staff then uses data obtained from the Department of Public Safety - Division of Criminal Justice regarding average length-of-stay by offense type in prison and parole, multiplied by the respective annual costs. To the extent that alternative sentences are used instead of incarceration in the DOC, estimated fiscal impacts to house a felony offender will decrease. However, because of judicial discretion, the use of alternative sentencing cannot be estimated in most cases. For bills with misdemeanor offenses, the fiscal note will consider potential state and local impacts based on comparable crime sentencing data obtained from the Judicial Department. Because offenders convicted of a misdemeanor are not sentenced to the DOC, impacts to the state are generally driven by court and probation workload. Misdemeanors primarily impact county jails, district attorneys, and the Denver County Court, all paid for by local governments.

Potential impacts to the Judicial Department (i.e., court system) are considered. These impacts include fine and fee revenue, trial court-related expenditures, probation supervision costs, and indigent defense. Fiscal impact statements may include an assessment regarding the need for any additional judges or court staff. Statements also include analysis of the impact on community corrections and county jails. To the extent that an offender is sentenced to community corrections instead of the DOC, state expenditures associated with the incarceration of the offender will decrease because community corrections per day operating costs are less than that of the DOC, and the length of stay in community corrections is also shorter.

**What is included in the impact statement:**

- |  |  |
|--|--|
| <input type="checkbox"/> Operating costs only (no capital costs)                           | <input checked="" type="checkbox"/> Community corrections impact   |
| <input checked="" type="checkbox"/> Operating costs and capital costs, if applicable       | <input checked="" type="checkbox"/> Jail/jail reimbursement impact |
| <input type="checkbox"/> Corrections costs only (not savings)                              | <input type="checkbox"/> Treatment/program impact                  |
| <input checked="" type="checkbox"/> Corrections costs and savings                          | <input type="checkbox"/> Local government impact                   |
| <input checked="" type="checkbox"/> Court system impact (judges, clerks, indigent defense) | <input type="checkbox"/> Victimization impact                      |
| <input checked="" type="checkbox"/> Prosecutor impact                                      | <input type="checkbox"/> Unclear                                   |

**How long of a projection is required:**

5 years

**What is required if the impact cannot be determined:**

Assumption regarding number of affected offenders may be made.

**Impact statement is binding or requires appropriation:**

Yes, appropriation must be made, per Section 2-2-703; however, in 2022, this requirement was suspended until July 1, 2025 (House Bill 22-1330, 2022 Colorado General Assembly).<sup>43</sup>

**Source(s)**

Colorado Revised Statutes (C.R.S.) Section 2-2-322 and 2-3-304

Colorado General Assembly. (2023). *Legislative Council Staff*. Retrieved from <https://leg.colorado.gov/agencies/legislative-council-staff/fiscal-notes>

Legislative Council Staff. (2023). *Memorandum on Overview of the Fiscal Notes Process*. Retrieved from [https://leg.colorado.gov/sites/default/files/images/criminal\\_justice\\_impacts\\_0.pdf](https://leg.colorado.gov/sites/default/files/images/criminal_justice_impacts_0.pdf)

Carpenter, Aaron. "Response: Corrections Impact Statements/Fiscal Notes." Received by Meredith Farrar-Owens. 16 October 2023. Email Interview.

**An example of an impact statement from Colorado can be found in Appendix H.**

<sup>43</sup> According to Legislative Council Staff in Colorado, this bill was recommended by the Joint Budget Committee in response to concerns that tracking statutory appropriations and reconciling them with annual prison population forecasts and appropriations through the budget was difficult and created unnecessary work.

## Connecticut

**Agency/organization that prepares corrections impact statements:**

Connecticut Sentencing Commission

**Requirement:**

The Connecticut Sentencing Commission is required to perform fiscal impact analyses on proposed criminal justice legislation.

Connecticut General Statutes § 54-300

**Note:**

Insufficient information is available for Connecticut to fully report on the corrections impact process. The Connecticut Sentencing Commission did not respond to requests for additional information.

## Illinois

### **Agency/organization that prepares corrections impact statements:**

Illinois Sentencing Policy Advisory Council<sup>44</sup>

### **Requirement:**

The Illinois Sentencing Policy Advisory Council (SPAC) must ensure that adequate resources and facilities are available for carrying out sentences imposed on offenders and that rational priorities are established for the use of those resources. To do so, SPAC, as resources permit, must prepare criminal justice resource statements identifying the fiscal and practical effects of sentencing legislation, including, but not limited to, the impacts on correctional populations, court processes, and county or local government resources.

730 Illinois Compiled Statutes (ILCS) 5/5-8-8

The Correctional Budget and Impact Note Act mandates that the Illinois Department of Corrections also produce a fiscal note if certain criteria are met (25 ILCS 70).

### **Types of bills for which impact statement is prepared:**

Impact statements are required for every bill that creates a new criminal offense for which a prison sentence may be imposed, that enhances any offense to a higher grade or penalty for which a prison sentence is authorized, or that specifies a mandatory commitment to prison. The SPAC will also review impacts on court processes and county/local governments.

### **Procedures or methods used in preparation of impact statement:**

SPAC looks retroactively at the past three fiscal years to determine the impact of the proposed policies had they been in effect. Information about prison admissions (including sentence length and jail credits) and prison exits are provided by the Illinois Department of Corrections (IDOC). Projected prison costs are calculated from SPAC estimates of the variable costs based on analyses of IDOC budget and cost figures. SPAC calculates the difference in estimated length of stay in prison under the current and proposed policies and subtracts these to determine how much more/less time a person admitted during the last three years would have spent in prison if the proposed law were in effect. The costs of prison are adjusted to net-present values using social discount rates to determine the total savings for just the admissions portion of the amended statute. Victimization costs are estimated from an average of inflation-adjusted costs from two studies that incorporate tangible and intangible victimization costs. To calculate the fiscal impact of a proposal on the criminal justice system, SPAC has employed a Dynamic Marginal Cost (DMC) model, developed after analyzing both state and local public safety budgeting over several decades. For the past several years, SPAC's model included "step costs" from estimated changes in staffing based on estimated changes to the prison population. Marginal costs are the costs of adding additional offenders compared to maintaining the status quo. The

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<sup>44</sup> Besides the Illinois Sentencing Policy and Advisory Council, the Department of Corrections may also produce an impact statement.



marginal costs can include: (1) variable costs, or costs that directly relate to services (laundry, food, etc.); (2) personnel costs that change when staffing levels change; and (3) fixed costs, costs related to physical space that vary only with large service changes. The types of costs included depends on the size of the change to the incarcerated population and if the expenditures for variable, personnel, and fixed costs change in tandem. For 2023, however, SPAC is using only the changes in variable costs (costs that directly relate to services such as laundry, food, etc.) in the incarcerated population and not estimating costs for staffing changes. Based on recent history, SPAC felt that even relatively large increases or reductions to the prison population would not result in significant staffing changes. For probation and parole, SPAC uses the average “per capita” costs. This average cost reflects the county and state per capita spending primarily on the variable costs of probation, including staffing and services provided to clients.

**What is included in the impact statement:**

- |  |  |
|--|--|
| <input type="checkbox"/> Operating costs only (no capital costs)                           | <input checked="" type="checkbox"/> Community corrections impact   |
| <input checked="" type="checkbox"/> Operating costs and capital costs, if applicable       | <input checked="" type="checkbox"/> Jail/jail reimbursement impact |
| <input type="checkbox"/> Corrections costs only (not savings)                              | <input type="checkbox"/> Treatment/program impact                  |
| <input checked="" type="checkbox"/> Corrections costs and savings                          | <input type="checkbox"/> Local government impact                   |
| <input checked="" type="checkbox"/> Court system impact (judges, clerks, indigent defense) | <input checked="" type="checkbox"/> Victimization impact           |
| <input type="checkbox"/> Prosecutor impact   | <input type="checkbox"/> Unclear                                   |

**How long of a projection is required:**

There is no specific requirement, but SPAC generally projects 15-20 years into the future.

**What is required if the impact cannot be determined:**

“Cannot be determined” is indicated on the statement.

**Impact statement is binding or requires appropriation:**

No, impact statement is advisory only.

**Source(s):**

730 Illinois Compiled Statutes (ILCS) 5/5-8-8 and 25 ILCS 70

Illinois Sentencing Policy Advisory Council. (2023). *2023 Update: Marginal Costs in Fiscal Impact Analyses*. Retrieved from <https://spac.icjia-api.cloud/uploads/2023%20Update%20-%20Marginal%20Costs%20for%20Fiscal%20Impacts-20230210T16344761.pdf>

Illinois Sentencing Policy Advisory Council. (2023). *Fiscal Impact Analysis*. Retrieved from <https://spac.illinois.gov/publications/fiscal-impact-analysis>

Gonzalez, Victoria. “Corrections Impact Statements/Fiscal Notes.” Received by Meredith Farrar-Owens. 11 October 2023. Email Interview.

**An example of an impact statement from Illinois can be found in Appendix H.**

## Iowa

### **Agency/organization that prepares corrections impact statements:**

Legislative Services Agency

### **Requirement:**

Prior to debate on the floor of a chamber of the General Assembly, a correctional impact statement shall be attached to any bill, joint resolution, or amendment which proposes a change in the law that creates a public offense, significantly changes an existing public offense or the penalty for an existing offense, or changes existing sentencing, parole, or probation procedures.

Iowa Code Section 2.56

### **Types of bills for which impact statement is prepared:**

A correctional impact statement is required for any bill, joint resolution, or amendment which proposes a change in the law which creates a public offense, significantly changes an existing public offense or the penalty for an existing offense, or changes existing sentencing, parole, or probation procedures.

### **Procedures or methods used in preparation of impact statement:**

The Iowa General Assembly purchased a prison population forecasting model. The Department of Human Rights, Criminal and Juvenile Justice Planning Division and the Department of Corrections (DOC) use the model to provide prison population projection data to the Legislative Services Agency (LSA) for correctional impact statements. Iowa has comprehensive databases for criminal justice information at the state level that feed data into the Justice Data Warehouse, which is then used for tasks such as correctional impacts, minority impacts, prison population forecasts, and other data mining activities. Limited county jail information is available.

The statements provide cost estimates to the corrections system (state prison, probation, and parole), public defender's office, and the Judicial Branch. The cost estimates are provided by offense class for non-violent crimes. The cost estimates do not include prosecution costs that may be county costs, state costs, or both. These cost estimates also do not include county jail operating costs due to a lack of data.

Judicial Branch salary costs are based on the budget. Average minutes per case for judges are based on a weighted case formula study conducted by the National Center for State Courts (NCSC). Average minutes per case for Clerk of Court staff are based on a work-time study conducted by the Judicial Branch in 2003. Costs for indigent defense are based on Iowa Code sections 13B.4 and 815.7.

Marginal costs for correctional facilities are based on actual fiscal year expenditures from all funding sources for the DOC and Community-Based Corrections. The average length of stay on probation or parole supervision is provided by the DOC. Average costs for parole

and probation supervision are based on actual fiscal year expenditures from all funding sources. The average length of stay in state prison by offense class is provided by the Criminal and Juvenile Justice Planning Division of the Department of Human Rights.

Iowa has computed costs of a single misdemeanor or felony conviction by seriousness level. The costs are provided in the form of a range. The minimum cost includes court time of a judge, court reporter, court attendant, and Clerk of Court staff. For simple misdemeanors, the maximum cost includes court time plus costs for indigent defense and state prison. For serious misdemeanors and felonies, the minimum cost includes court time of a judge, court reporter, court attendant, and Clerk of Court staff plus the costs of probation supervision. The maximum cost includes court time and the costs of a jury trial, indigent defense, state prison, and parole supervision. Cost estimates for serious and aggravated misdemeanors and all felony convictions will be incurred across multiple fiscal years while the offender is supervised in the correctional system, either in prison or the community.

**What is included in the impact statement:**

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Operating costs only (no capital costs)                | <input checked="" type="checkbox"/> Community corrections impact |
| <input type="checkbox"/> Operating costs and capital costs, if applicable                  | <input type="checkbox"/> Jail/jail reimbursement impact          |
| <input type="checkbox"/> Corrections costs only (not savings)                              | <input type="checkbox"/> Treatment/program impact                |
| <input checked="" type="checkbox"/> Corrections costs and savings                          | <input type="checkbox"/> Local government impact                 |
| <input checked="" type="checkbox"/> Court system impact (judges, clerks, indigent defense) | <input type="checkbox"/> Victimization impact                    |
| <input type="checkbox"/> Prosecutor impact   | <input type="checkbox"/> Unclear                                 |

**How long of a projection is required:**

5 years

**What is required if the impact cannot be determined:**

Statement shows cost of one conviction or cost of incarcerating one offender.

**Impact statement is binding or requires appropriation:**

No, impact statement is advisory only.

**Source(s):**

Iowa Code Section 2.56

Legislative Services Agency. (2013). "Correctional and Minority Impact Statements". Retrieved on 09/29/2023 from <https://www.legis.iowa.gov/DOCS/IsaReports/FiscalLunchLearn/MinorityImpactStatementPresentation.pdf>

Acton, Jennifer. "Corrections Impact Statements/Fiscal Notes". Received by Meredith Farrar-Owens. 17 October 2023. Email Interview.

**An example of an impact statement from Iowa can be found in Appendix H.**

## Kansas

### **Agency/organization that prepares corrections impact statements:**

Kansas Sentencing Commission

### **Requirement:**

When requested by the chairperson of a special or standing committee of the legislature, a fiscal impact and correctional resource statement shall be provided for bills amending any current crime or creating a new crime under the laws of the state of Kansas. The fiscal impact and correctional resources statement shall include a reliable estimate in dollars of the anticipated expenditures and change in utilization of correctional resources necessary to carry out the provisions of the bill.

Kansas Code § 74-9106

### **Types of bills for which impact statement is prepared:**

When requested, correctional resource statements are prepared for bills amending any current crime or creating a new crime under the laws of the state of Kansas.

### **Procedures or methods used in preparation of impact statement:**

The Kansas Sentencing Commission conducts analyses to forecast the state's adult and juvenile offender populations and to determine the impact of proposed legislation on the prison population. In fiscal year (FY) 1996, the legislature allocated resources to the Commission for the acquisition of the PROPHET Simulation Model, an interactive microcomputer software system designed by the National Council on Crime and Delinquency (NCCD). The PROPHET model permits staff analysts to construct a model that mimics the flow of offenders through the prison and parole populations, based on the state's sentencing structure and policy environment. In addition to prison forecasts, the model allows analysts to determine the impact of proposed legislation on the prison population, thus facilitating the Commission's duty to prepare and submit fiscal impact and correctional resource statements as required.

The Kansas Sentencing Commission produces the prison bed space impact projection that other agencies then use to assign the financial impact. For bills that impact the prison population, correctional resource statements provide the number of additional beds that would be needed if the legislation were enacted. Prison bed capacity is also noted, along with the most recent overall prison population projection for the next fiscal year. Input from affected agencies, such as the Department of Corrections, is also included.

Impact projections are provided to the Kansas Division of the Budget, which prepares a corrections impact letter to the committee chairperson who requested the statement.

**What is included in the impact statement:**

- |  |   |
|--|---|
| <input type="checkbox"/> Operating costs only (no capital costs)                           | <input type="checkbox"/> Community corrections impact   |
| <input checked="" type="checkbox"/> Operating costs and capital costs, if applicable       | <input type="checkbox"/> Jail/jail reimbursement impact |
| <input type="checkbox"/> Corrections costs only (not savings)                              | <input type="checkbox"/> Treatment/program impact       |
| <input checked="" type="checkbox"/> Corrections costs and savings                          | <input type="checkbox"/> Local government impact        |
| <input checked="" type="checkbox"/> Court system impact (judges, clerks, indigent defense) | <input type="checkbox"/> Victimization impact           |
| <input type="checkbox"/> Prosecutor impact   | <input type="checkbox"/> Unclear                        |

\* In Kansas, the court system may provide a separate impact statement.

**How long of a projection is required:**

10 years

**What is required if the impact cannot be determined:**

Assumption regarding number of affected offenders may be made.

**Impact statement is binding or requires appropriation:**

No, impact statement is advisory only.

**Source(s):**

Kansas Code § 74-9106

Kansas Sentencing Commission. (2023). *Goals and Objectives*. Retrieved from <https://sentencing.ks.gov/about-us/goals-objectives#>

Harmon, Brenda. Personal communication, 25 October 2023.

**An example of an impact statement from Kansas can be found in Appendix H.**

## Kentucky

### **Agency/organization that prepares corrections impact statements:**

Kentucky Department of Corrections with the assistance of the Department of Kentucky State Police, Administrative Office of the Courts, Parole Board, and other persons, agencies, or organizations deemed necessary by the Department of Corrections

### **Requirement:**

Any bill, amendment, or committee substitute that creates a new crime, increases or decreases the penalty for an existing crime, changes elements of an existing offense, repeals an existing crime, or proposes to impact incarceration must be identified by the staff of the Legislative Research Commission as having a corrections impact. If a bill, amendment, or committee substitute is identified as having a corrections impact, an impact statement must be prepared by the staff of the Department of Corrections with the assistance of other agencies as deemed necessary.

Kentucky Code § 6.949

### **Types of bills for which impact statement is prepared:**

A corrections impact statement is required for legislation that creates a new crime, increases or decreases the penalty for an existing crime, changes elements of an existing offense, repeals an existing crime, or proposes to impact incarceration.

### **Procedures or methods used in preparation of impact statement:**

Pursuant to § 6.949, the corrections impact statement shall contain the estimated costs, estimated savings, and necessary appropriations based upon:

- Incarceration in jail prior to trial and during trial based on the available information about persons granted bail or other form of pretrial release and the length of time spent in jail prior to release;
- Supervision of a person who has been granted bail or pretrial release based on the average time spent between the time of release until the time of trial for the offense;
- Incarceration in jail for a misdemeanor following conviction based on the maximum time of incarceration authorized for the offense;
- Incarceration in a state correctional facility for a capital offense, or felony offense based on the maximum and minimum length of incarceration authorized for the offense, except for offenses in which incarceration in a county jail for a Class D felony is required;
- Incarceration in a county jail for a Class D felony for which incarceration in a county jail is authorized based on the maximum and minimum sentence of incarceration authorized for a Class D felony;
- Probation or conditional discharge supervision based on the maximum time of probation or conditional discharge authorized for the offense;
- Parole supervision based on the minimum expiration of sentence; and
- Treatment, education, and other programs which are to be paid by the state based on the average costs actually paid by the DOC during the previous fiscal year.

Insofar as possible, costs and savings for a change to an existing crime shall be calculated using:

- Arrest data for the crime from the Department of Kentucky State Police;
- Pretrial incarceration data from the Administrative Office of the Courts;
- Preconviction jail data from the Administrative Office of the Courts;
- Conviction data from the Administrative Office of the Courts;
- Postconviction jail and imprisonment data from the Department of Corrections;
- Probation and parole data from the Department of Corrections; and
- Data from applicable agencies or organizations providing treatment, education, or other mandated programs.

Insofar as possible, costs or savings for a new crime shall be calculated in the same manner as for changes to an existing crime using data for similar crimes, unless that is determined by DOC to be impractical or impossible in which case the estimate for a new crime may be prepared using:

- The maximum and minimum length of incarceration for the offense;
- An estimate of cost based on 10 persons and 100 persons being charged with the offense;
- An estimate of cost based on 10 persons and 100 persons being convicted of the offense and sent to jail if the offense is a misdemeanor using the criteria specified in subsection (7) of § 6.949; and
- An estimate of cost based on 10 persons and 100 persons being convicted of a felony offense requiring imprisonment in a state-operated correctional facility, unless the offense is a Class D felony for which imprisonment in a county jail is required, in which case the cost shall be based on the amount paid by the Department of Corrections for a person incarcerated in a county jail for a Class D felony.

Costs or savings shall be based on the average costs actually paid by DOC during the previous fiscal year for incarceration of a person in a state correctional facility, the average cost for supervision of a person placed on probation without electronic monitoring, the average cost of a person placed on probation with electronic monitoring, the average cost of parole supervision without electronic monitoring, and the average cost of parole supervision with electronic monitoring.

If an amendment to a bill is combined into a committee substitute or another version of the bill is created incorporating a floor amendment, a new corrections impact statement must be prepared.

In general, the projected impact on the state is classified as none, minimal to moderate (meaning the impact is estimated to be less than \$1 million), or significant (meaning the impact is estimated to be \$1 million or more). A separate assessment is made of the expected local impact. Dollar figures are based on the number of additional convictions expected under the legislation multiplied by the cost to incarcerate one offender. Cost figures vary based on the class of the crime. Assumptions may be made regarding the percentage of offenders who ultimately may be affected by the legislation. Final impact statements address both potential costs and savings.

**What is included in the impact statement:**

- |  |  |
|--|--|
| <input type="checkbox"/> Operating costs only (no capital costs)                     | <input checked="" type="checkbox"/> Community corrections impact   |
| <input checked="" type="checkbox"/> Operating costs and capital costs, if applicable | <input checked="" type="checkbox"/> Jail/jail reimbursement impact |
| <input type="checkbox"/> Corrections costs only (not savings)                        | <input checked="" type="checkbox"/> Treatment/program impact       |
| <input checked="" type="checkbox"/> Corrections costs and savings                    | <input type="checkbox"/> Local government impact                   |
| <input type="checkbox"/> Court system impact (judges, clerks, indigent defense)      | <input type="checkbox"/> Victimization impact                      |
| <input type="checkbox"/> Prosecutor impact   | <input type="checkbox"/> Unclear                                   |

**How long of a projection is required:**

Unclear and appears dependent on the nature of the bill.

**What is required if the impact cannot be determined:**

Assumption regarding number of affected offenders may be made.

**Impact statement is binding or requires appropriation:**

No, impact statement is advisory only.

**Source(s):**

Kentucky Code § 6.949

Kentucky Department of Corrections. (2021). Corrections Impact Statement for HB126, Session 21RS. Retrieved from <https://apps.legislature.ky.gov/recorddocuments/note/21RS/hb126/CI.pdf>

Moore, Beth. "Corrections Impact Statements or Fiscal Notes". Received by Meredith Farrar-Owens. 23 October 2023. Email Interview.

**An example of an impact statement from Kentucky can be found in Appendix H.**



## Louisiana

### Agency/organization that prepares corrections impact statements:

Legislative Fiscal Office

### Requirement:

The Legislative Fiscal Office is responsible for fiscal notes for every bill and joint resolution that:

- 1) Will affect the receipt, expenditure, allocation, or dedication, in an estimated amount, as determined by the legislative fiscal officer, of one hundred thousand dollars or more in any one fiscal year of either state funds or of the funds of any statewide political subdivision of the state whose boundaries are coterminous with the state;
- 2) Will authorize the issuance of general obligation bonds or other general obligations of the state or such political subdivision;
- 3) Concerns any program wholly or partially funded by federal monies and involves an expenditure in an amount of one hundred thousand dollars or more in any one fiscal year of state funds or funds of any such political subdivision;
- 4) Provides a minimum or maximum mandatory prison sentence; or
- 5) Will affect the receipt, allocation, or dedication of the funds of any political subdivision of the state whose boundaries are not coterminous with the state.

Such bill or resolution must have attached to it prior to its consideration by any committee of either house, unless the committee otherwise decides, and prior to its consideration on final passage in either house, if requested pursuant to paragraph B of Joint Rule Number 4, a fiscal note prepared by the Legislative Fiscal Office which shall include a reliable estimate of the fiscal effect of such measure.

Louisiana State Legislature, Joint Rule Number 4

### Note:

Insufficient information is available to fully report on the corrections impact process in Louisiana. The Louisiana Legislative Fiscal Office did not respond to requests for additional information.

## Maryland

### **Agency/organization that prepares corrections impact statements:**

Department of Legislative Services, Office of Policy Analysis, with input from multiple agencies such as the Maryland Sentencing Commission

### **Requirement:**

Section 2-1249 of the State Government Article addresses fiscal and policy notes. These provisions apply to all fiscal and policy notes, not just those related to corrections legislation. Among other things, the statute requires the Office of Policy Analysis within DLS to “prepare analyses of the fiscal, legal, and policy impact of proposed legislation.” Section 2-1249(c) specifies that “[i]n order to facilitate the preparation of the analyses required under subsection (a)(1) of this section, a unit of State government shall respond to a request from the Office for information on the fiscal and operational impact of proposed legislation within 3 business days after receipt of the request.” The office may waive this requirement on a case-by-case basis.

Section 2-1249 of the State Government Article

### **Types of bills for which impact statement is prepared:**

Fiscal and policy notes estimate the impact of a bill on state revenues and expenditures; while these are not corrections impact statements per se, these notes do include information regarding estimated incarceration costs when applicable.

### **Procedures or methods used in preparation of impact statement:**

When a bill is introduced and scheduled for a hearing in a standing committee, the Department of Legislative Services (DLS) prepares and publishes a fiscal and policy note. Fiscal and policy notes estimate the impact of a bill on state revenues and expenditures over a five-year period; while these are not corrections impact statements per se, these notes do include information regarding estimated incarceration costs when applicable. Fiscal and policy notes also include information regarding the fiscal and operational effect of a bill on local governments.

When preparing a fiscal policy note, DLS requests information from potentially affected agencies (including local governments) regarding the estimated impact of the bill on agency finances. The Department of Public Safety and Correctional Services (DPSCS) is often contacted for information on legislation related to criminal justice and corrections. DLS then develops its own estimate, when possible, using information received from contacted agencies and any other information gleaned from other sources. DLS also develops standard language each year that relates to inmate costs (state and local). This standard language is included in applicable notes.

DLS also prepares fiscal and policy notes for subsequent versions of a bill; analysts contact agencies regarding the potential fiscal and operational impact of amended bills.

**What is included in the impact statement:**

- |  |   |
|--|---|
| <input type="checkbox"/> Operating costs only (no capital costs)                           | <input type="checkbox"/> Community corrections impact       |
| <input checked="" type="checkbox"/> Operating costs and capital costs, if applicable       | <input type="checkbox"/> Jail/jail reimbursement impact     |
| <input type="checkbox"/> Corrections costs only (not savings)                              | <input type="checkbox"/> Treatment/program impact           |
| <input checked="" type="checkbox"/> Corrections costs and savings                          | <input checked="" type="checkbox"/> Local government impact |
| <input checked="" type="checkbox"/> Court system impact (judges, clerks, indigent defense) | <input type="checkbox"/> Victimization impact               |
| <input checked="" type="checkbox"/> Prosecutor impact                                      | <input type="checkbox"/> Unclear                            |

**How long of a projection is required:**

5 years

**What is required if the impact cannot be determined:**

“Cannot be determined” is indicated on the statement.

**Impact statement is binding or requires appropriation:**

No, impact statement is advisory only.

**Source(s):**

State Government Article Section 2-1249

Maryland Department of Legislative Services. (2023). *Fiscal and Policy Notes*. Retrieved from <http://dls.maryland.gov/about-us/offices/fiscal-and-policy-notes>

Devades, Amy. “Correctional Impact Statements”. Received by Meredith Farrar-Owens. 19 October 2023. Email Interview.

**An example of an impact statement from Maryland can be found in Appendix H.**

## Mississippi

### **Agency/organization that prepares corrections impact statements:**

Mississippi Department of Corrections

### **Requirement:**

Whenever legislation is introduced that would establish a new criminal offense or would amend the sentencing provisions of an existing criminal offense, the Department of Corrections (DOC) must provide a fiscal note and a ten-year fiscal note on the proposed legislation upon the request of any member of the legislature.

Mississippi Code § 47-5-39 (2020)

Pursuant to the Mississippi Legislature's Joint Rules of the Senate and the House, every bill and concurrent resolution, the purpose or effect of which is to expend any state funds or enable the spending of any state funds or to increase or decrease the revenue of the state, either directly or indirectly, shall have attached to it at the time of its being reported by any committee of either house of the Legislature a brief explanatory statement or note which shall include a reliable estimate of the anticipated change in state expenditures or revenues under its provisions.

Mississippi Legislature, Joint Rules of the Senate and the House, Rule 20

### **Types of bills for which impact statement is prepared:**

Upon request of a member of the legislature, a fiscal note is prepared for any bill that would establish a new criminal offense or would amend the sentencing provisions of an existing criminal offense.

### **Procedures or methods used in preparation of impact statement:**

State agencies and political subdivisions must cooperate with the DOC in preparing fiscal notes and the ten-year fiscal notes. Such agencies and political subdivisions submit requested information to the Department in a timely fashion. In preparing fiscal notes and the ten-year fiscal notes, the Department must accurately report to the legislature information provided to the DOC by other state agencies and political subdivisions. The DOC may request information from nongovernmental agencies and organizations to assist in preparing the fiscal note and the ten-year fiscal note.

The fiscal note shall be prepared by the commission or agency and furnished to the author of the bill or committee considering same within seven days after the request is made. If the author of, or committee considering, the bill disagrees with the findings of the agency or agencies, then the author or committee may also attach and furnish a fiscal note, based upon his, her, or its information, research, study, and belief which shall then be incorporated in and become a part of the fiscal note. If the appropriate agency does not furnish a fiscal note after seven days' request, then the author or committee may furnish the fiscal note, based upon his, her, or its information, research, study, and belief. If, after careful

investigation, it is determined that no dollar estimate is possible, the note shall contain a statement to that effect, setting forth the reasons why no dollar estimate can be given. No comment or opinion shall be included in the fiscal note with regard to the merit, or lack thereof, of the measure for which the note is prepared.

**What is included in the impact statement:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Operating costs only (no capital costs)     | <input checked="" type="checkbox"/> Community corrections impact |
| <input type="checkbox"/> Operating costs and capital costs, if applicable       | <input type="checkbox"/> Jail/jail reimbursement impact          |
| <input type="checkbox"/> Corrections costs only (not savings)                   | <input type="checkbox"/> Treatment/program impact                |
| <input checked="" type="checkbox"/> Corrections costs and savings               | <input type="checkbox"/> Local government impact                 |
| <input type="checkbox"/> Court system impact (judges, clerks, indigent defense) | <input type="checkbox"/> Victimization impact                    |
| <input type="checkbox"/> Prosecutor impact                                      | <input type="checkbox"/> Unclear                                 |

**How long of a projection is required:**

3 years

Note: The Mississippi Department of Corrections projects out three years but, by statute, the projection period can be up to 10 years.

**What is required if the impact cannot be determined:**

“Cannot be determined” is indicated on the statement.

**Impact statement is binding or requires appropriation:**

No, impact statement is advisory only.

**Source(s):**

Mississippi Code § 47-5-39 (2020)

Mississippi Legislature. *Joint Rules of the Senate and the House, Joint Convention*. Retrieved from [http://billstatus.ls.state.ms.us/htms/j\\_rules.pdf](http://billstatus.ls.state.ms.us/htms/j_rules.pdf)

McAfee, Audrey. “Corrections Impact Statements/Fiscal Notes”. Received by Meredith Farrar-Owens. 30 October 2023. Email Interview.

**An example of an impact statement from Mississippi can be found in Appendix H.**

## Missouri

### Agency/organization that prepares corrections impact statements:

Missouri Department of Corrections in consultation with the Oversight Division of the Committee on Legislative Research

### Requirement:

The fiscal note of any legislation affecting the prison population or any program or service provided by the Missouri Department of Corrections shall be accompanied by a prison impact statement. The Department of Corrections, in consultation with the Oversight Division of the Committee on Legislative Research, prepares the prison impact statement.

Missouri Code § 217.022

### Types of bills for which impact statement is prepared:

Prison impact statements are required for any bill that will affect the prison population or any prison program or service provided by the Missouri Department of Corrections.

### Procedures or methods used in preparation of impact statement:

The prison impact statement must include:

- Projections of the impact on prison, probation, and parole populations;
- An estimate of the fiscal impact on such populations, for the current fiscal year and up to ten succeeding fiscal years;
- An analysis of any other significant factors affecting the cost of the measure and its impact on the criminal justice system<sup>45</sup>; and
- A statement of the assumptions and methodologies utilized in preparing the statement.

Statements indicate if the estimated expenditures/reduced revenues or savings/increased revenues will exceed \$250,000.

### What is included in the impact statement:

- |  |   |
|--|---|
| <input type="checkbox"/> Operating costs only (no capital costs)                     | <input type="checkbox"/> Community corrections impact   |
| <input checked="" type="checkbox"/> Operating costs and capital costs, if applicable | <input type="checkbox"/> Jail/jail reimbursement impact |
| <input type="checkbox"/> Corrections costs only (not savings)                        | <input type="checkbox"/> Treatment/program impact       |
| <input checked="" type="checkbox"/> Corrections costs and savings                    | <input type="checkbox"/> Local government impact        |
| <input type="checkbox"/> Court system impact (judges, clerks, indigent defense)      | <input type="checkbox"/> Victimization impact           |
| <input type="checkbox"/> Prosecutor impact   | <input type="checkbox"/> Unclear                        |

\* Agencies other than the Missouri Department of Corrections provide projected impacts separately.

<sup>45</sup> Non-DOC entities provide responses on projected impacts independently.

**How long of a projection is required:**

10 years

**What is required if the impact cannot be determined:**

“Cannot be determined” is indicated on the statement.

**Impact statement is binding or requires appropriation:**

No, impact statement is advisory only.

**Source(s):**

Missouri Code § 217.022

Committee on Legislative Research, Oversight Division. (2023). Fiscal Note HB340. Retrieved from <https://documents.house.mo.gov/billtracking/bills231/fiscal/fispdf/0558H.011.ORG.pdf>

Edwards, David. (2023). “Corrections Impact Statements/Fiscal Notes”. Received by Meredith Farrar-Owens. 12 October 2023. Email Interview.

**An example of an impact statement from Missouri can be found in Appendix H.**

## Nevada

### **Agency/organization that prepares corrections impact statements:**

Legislative Fiscal Analysis Division in consultation with the affected agency or agencies

### **Requirement:**

The Fiscal Analysis Division is required to obtain a fiscal note for any bill or joint resolution, before a vote is taken by a committee, that creates or increases any fiscal liability, decreases revenue in excess of \$2,000, or increases or newly provides for a term of imprisonment in the state prison. Except as otherwise provided in Nevada Revised Statutes 218D.400 to 218D.495, inclusive, or a joint rule, the estimates must be made by the affected agency or agencies.

Nevada Revised Statutes (N.R.S.) § 218D.430

### **Types of bills for which impact statement is prepared:**

Fiscal notes are prepared for any bill or joint resolution, before a vote is taken by a committee, that creates or increases any fiscal liability, decreases revenue in excess of \$2,000, or increases or newly provides for a term of imprisonment in the state prison.

### **Procedures or methods used in preparation of impact statement:**

Summary of the fiscal impact of proposed changes in law is intended for consideration during policy and money committee deliberations. Fiscal notes are required only for proposed decreases in revenue and/or increases in expenditures. Fiscal notes are only required to be obtained on the bill as introduced. The Fiscal Analysis Division is not required to obtain a fiscal note on an amended bill, unless directed to do so by the Speaker of the Assembly or the Senate Majority Leader.

The fiscal note must include any anticipated change in appropriation authority, fiscal liability, or state revenue under the bill, including, to the extent possible, a projection of such changes in future biennia. The review process generally includes a review by the state's Executive Budget Office.

Bills with fiscal impact are sent to the Fiscal Division for assignment. State agencies have five working days to submit a completed fiscal note, which includes a review by the Executive Budget Office. State agencies submit fiscal notes through the Executive Budget Office. The Fiscal Analysis Division performs a cursory review of submitted fiscal notes for completeness and any obvious flaws. The Fiscal Analysis Division does not verify the information contained in the note unless it has been specifically requested to do so.

Committees may hear a bill with a fiscal impact prior to receiving a fiscal note but may not vote on such a measure until the fiscal note is available. State agencies and local government entities may submit unsolicited fiscal notes. Fiscal notes are not prepared for amendments unless the presiding officer has specifically requested it. Members may request a fiscal note at any time by making such a request through the presiding officer of the body.



If the agency or local government concludes that no dollar amount can be estimated, the fiscal note must so state with reasons for such a conclusion (N.R.S. 218D.470).

**What is included in the impact statement:**

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Operating costs only (no capital costs)     | <input type="checkbox"/> Community corrections impact   |
| <input type="checkbox"/> Operating costs and capital costs, if applicable       | <input type="checkbox"/> Jail/jail reimbursement impact |
| <input checked="" type="checkbox"/> Corrections costs only (not savings)        | <input type="checkbox"/> Treatment/program impact       |
| <input type="checkbox"/> Corrections costs and savings                          | <input type="checkbox"/> Local government impact        |
| <input type="checkbox"/> Court system impact (judges, clerks, indigent defense) | <input type="checkbox"/> Victimization impact           |
| <input type="checkbox"/> Prosecutor impact                                      | <input type="checkbox"/> Unclear                        |

\* In Nevada, affected agencies will submit a separate fiscal note.

**How long of a projection is required:**

5 years

**What is required if the impact cannot be determined:**

Assumption regarding number of affected offenders may be made.

**Impact statement is binding or requires appropriation:**

No, impact statement is advisory only.

**Source(s):**

Nevada Revised Statutes (N.R.S.) § 218D.415, § 218D.430, and § 218D.440

Nevada State Legislature. (2013). *Pre-Session Orientation Program - Fiscal Note Process*. Retrieved from <https://www.leg.state.nv.us/Division/Research/LegInfo/Orientation/2012-13/Handouts/NakamotoHandout.pdf>

Malone, James. (2023). "Corrections Impact Statements/Fiscal Notes – Nevada". Received by Meredith Farrar-Owens. 11 October 2023. Email Interview.

**An example of an impact statement from Nevada can be found in Appendix H.**

## North Carolina

### **Agency/organization that prepares corrections impact statements:**

Fiscal Research Division of the North Carolina legislature in consultation with the North Carolina Sentencing Policy and Advisory Commission

### **Requirement:**

A fiscal note is required for any legislation proposing a change in the law that could cause a net increase in the length of time for which persons are incarcerated or the number of persons incarcerated, whether by increasing penalties for violating existing laws, by criminalizing behavior, or by any other means. The process requires the Fiscal Research Division to work in concert with the North Carolina Sentencing Policy and Advisory Commission.

North Carolina Code § 120-36.7(d)

### **Types of bills for which impact statement is prepared:**

Fiscal notes are prepared for bills that propose a change in the law that could cause a net increase in the length of time for which persons are incarcerated or the number of persons incarcerated.

### **Procedures or methods used in preparation of impact statement:**

The sponsor of each bill or resolution to which this subsection applies must present a copy of the bill or resolution with the request for a fiscal note to the Fiscal Research Division. Upon receipt of the request and the copy of the bill or resolution, the Fiscal Research Division shall prepare the fiscal note as promptly as possible.

Incarceration notes are prepared by staff of the Fiscal Research Division after consultation with the Administrative Office of the Courts (AOC) and the Sentencing and Policy Advisory Commission (SPAC). Fiscal Research is statutorily required to consult with SPAC for each note but chooses to also consult with AOC. AOC maintains offense, or charge, data and SPAC maintains conviction data. The Department of Adult Correction (DAC) and Indigent Defense Services (IDS) are also given an opportunity to weigh in on the proposed legislation, but they rarely comment. DAC, AOC, and IDS provide baseline numbers, such as the average cost to AOC for a given class of criminal offense, to the Fiscal Research Division every two years.

Pursuant to § 120-36.7, for the first five fiscal years the proposed change would be in effect, fiscal notes must reflect all costs of the proposed net increase in incarceration, including capital outlay costs if the legislation would require increased cell space. If, after careful investigation, the Fiscal Research Division determines that no dollar estimate is possible, the note shall contain a statement to that effect, setting forth the reasons why no dollar estimate can be given. No comment or opinion shall be included in the fiscal note with regard to the merits of the measure for which the note is prepared. Technical and mechanical defects may be noted. Amended bills are to receive updated fiscal notes.

If there is no data available to predict how many individuals may be charged or convicted, the incarceration notes include the average cost of a charge and a conviction for each offense level upon the court system, prosecution, indigent defense, and community corrections in addition to confinement operating costs.

**What is included in the impact statement:**

- |  |  |
|--|--|
| <input type="checkbox"/> Operating costs only (no capital costs)                           | <input checked="" type="checkbox"/> Community corrections impact |
| <input checked="" type="checkbox"/> Operating costs and capital costs, if applicable       | <input type="checkbox"/> Jail/jail reimbursement impact          |
| <input checked="" type="checkbox"/> Corrections costs only (not savings)                   | <input type="checkbox"/> Treatment/program impact                |
| <input type="checkbox"/> Corrections costs and savings                                     | <input type="checkbox"/> Local government impact                 |
| <input checked="" type="checkbox"/> Court system impact (judges, clerks, indigent defense) | <input type="checkbox"/> Victimization impact                    |
| <input checked="" type="checkbox"/> Prosecutor impact                                      | <input type="checkbox"/> Unclear                                 |

**How long of a projection is required:**

5 years

**What is required if the impact cannot be determined:**

“Cannot be determined” is indicated on the statement.

**Impact statement is binding or requires appropriation:**

No, impact statement is advisory only.

**Source(s):**

North Carolina Code § 120-36.7

Weiss, Morgan. (2023). “Corrections Impact Statements/Fiscal Notes”. Received by Meredith Farrar-Owens. 23 October 2023. Email Interview.

**An example of an impact statement from North Carolina can be found in Appendix H.**

## Ohio

### **Agency/organization that prepares corrections impact statements:**

Ohio Department of Rehabilitation and Correction<sup>46</sup>

### **Requirement:**

If the Director of the Department of Rehabilitation and Correction determines that a bill introduced in the Ohio General Assembly is likely to have a significant fiscal impact on any or all state correctional institutions, the Department must prepare a population and cost impact statement for the bill. The fiscal impact statement will estimate the effect on the correctional institution population and the amount by which revenues or expenditures likely would increase or decrease if the bill were enacted.

Ohio Revised Code § 5120.51

### **Types of bills for which impact statement is prepared:**

Statute requires a population and cost impact statement for any bill that the Director of the Department of Rehabilitation and Correction determines is likely to have a significant fiscal impact on corrections institutions.

### **Procedures or methods used in preparation of impact statement:**

A population and cost impact statement required for a bill initially will be prepared after the bill is referred to a committee of the General Assembly in the house of origination but before the meeting of the committee at which the committee is scheduled to vote on whether to recommend the bill for passage. A copy of the statement shall be distributed to each member of the committee that is considering the bill and to the member of the General Assembly who introduced it. If the bill is recommended for passage by the committee, the Department shall update the statement before the bill is taken up for final consideration by the house of origination. A copy of the updated statement shall be distributed to each member of that house and to the member of the General Assembly who introduced the bill. If the bill is passed by the house of origination and is introduced in the second house, the provisions of this division concerning the preparation, updating, and distribution of the statement in the house of origination also apply in the second house.

The Governor or any member of the General Assembly, at any time, may request the department to prepare a population and cost impact statement for any bill introduced in the General Assembly. Upon receipt of a request, the Department of Rehabilitation and Correction promptly shall prepare a statement that includes the estimates and explanations and present a copy of it to the Governor or member who made the request.

In the preparation of a population and cost impact statement, the Department shall use a technologically sophisticated system capable of estimating future state correctional

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<sup>46</sup> Impacts on other affected agencies may be filed separately and included in a statement prepared by the Ohio Legislative Service Commission.

institution populations. The system shall have the capability to adjust its estimates based on actual and proposed changes in sentencing laws and trends, sentence durations, parole rates, crime rates, and any other data that affect state correctional institution populations. The Department, in conjunction with an advisory committee, will review and update the data used in the system, not less than once every six months, to improve the accuracy of the system.

**What is included in the impact statement:**

- |   |   |
|---|---|
| <input type="checkbox"/> Operating costs only (no capital costs)                | <input type="checkbox"/> Community corrections impact   |
| <input type="checkbox"/> Operating costs and capital costs, if applicable       | <input type="checkbox"/> Jail/jail reimbursement impact |
| <input type="checkbox"/> Corrections costs only (not savings)                   | <input type="checkbox"/> Treatment/program impact       |
| <input checked="" type="checkbox"/> Corrections costs and savings               | <input type="checkbox"/> Local government impact        |
| <input type="checkbox"/> Court system impact (judges, clerks, indigent defense) | <input type="checkbox"/> Victimization impact           |
| <input type="checkbox"/> Prosecutor impact                                      | <input type="checkbox"/> Unclear                        |

\* Based on available information, it is unclear if corrections impact statements in Ohio provide operating costs only or if they include capital costs, if applicable.

Impacts on other affected agencies may be filed separately and included in a statement prepared by the Ohio Legislative Service Commission. These may include impacts on the court system and county criminal justice systems.

**How long of a projection is required:**

Unclear

**What is required if the impact cannot be determined:**

Statement shows cost of one conviction or cost of incarcerating one offender.

**Impact statement is binding or requires appropriation:**

No, impact statement is advisory only.

**Source(s):**

Ohio Revised Code § 5120.51

Ohio Legislative Service Commission. (2023). *Final Fiscal Note & Local Impact Statement for SB288*. Retrieved from <https://www.lsc.ohio.gov/assets/organizations/legislative-service-commission/files/2023-local-impact-statement-report-senate-bill-288.pdf>

**An example of an impact statement from Ohio can be found in Appendix H.**

## Oregon

### **Agency/organization that prepares corrections impact statements:**

Legislative Fiscal Office, with the aid of the Legislative Revenue Office, state agencies, and affected local governmental units

### **Requirement:**

A fiscal impact statement for any measure reported out of a legislative committee, the effect of which is to create a new crime, increase the period of incarceration allowed or required for an existing crime, or otherwise modify sentencing or state corrections policies.

Oregon Revised Code § 173.029

### **Types of bills for which impact statement is prepared:**

Fiscal impact statements are prepared for bills that create a new crime, increase the period of incarceration allowed or required for an existing crime, or otherwise modify sentencing or state corrections policies.

### **Procedures or methods used in preparation of impact statement:**

Fiscal impact statements are intended to be independent, objective, data-driven analyses that cover direct financial effects on state and local governments. Fiscal impact statements may be requested when the Speaker of the House or President of the Senate assigns a bill to a committee or for the purposes of a conference committee of House and Senate members to resolve differences between two versions of the bill.

Legislative Policy and Research Office (LPRO) submits a request for a fiscal impact statement to the Legislative Fiscal Office (LFO). LFO sends a request to agencies. Agencies provide all necessary information. The statement includes a description of the bill along with history, red flags, or unintended consequences. Quantitative analysis includes impacts on resources (staff, equipment, regional offices, IT systems, etc.) to implement and manage the provisions of the measure. The fiscal impact statement required under this section must describe the fiscal impact that the measure would, if enacted, have on the state as well as on local governmental units for 10 years, beginning on the effective date of the measure.

Types of impacts are:

- 1) No Fiscal - The measure can be implemented without incurring costs.
- 2) Minimal Fiscal - Implementation of the measure can be absorbed within existing resources.
- 3) (Written) Fiscal - Implementation of the measure requires additional resources. The written fiscal impact statement must include a comprehensive narrative explaining the fiscal impact and must include a worksheet with detailed cost calculations. The impact may be indeterminate and the statement will include a narrative that discusses known costs and what elements of the bill cannot be quantified and why.

In particular and to the extent practicable, the Legislative Fiscal Officer is to determine and describe in the statement the following:

- The fiscal impact on state and local law enforcement agencies, including an estimate of the increase in anticipated number of arrests annually;
- The fiscal impact on state and local courts, including an estimate of the increase in the anticipated number of cases annually;
- The fiscal impact on district attorney offices, including an estimate of the increase in the anticipated number of prosecutions annually;
- The fiscal impact on public defense resources, including an estimate of the increase in the anticipated number of cases annually; and
- The fiscal impact on state and local corrections resources, including resources supporting parole and probation supervision, and also including an estimate of the increase in the anticipated number of state and local bed-days.

**What is included in the impact statement:**

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Operating costs only (no capital costs)                | <input checked="" type="checkbox"/> Community corrections impact   |
| <input type="checkbox"/> Operating costs and capital costs, if applicable                  | <input checked="" type="checkbox"/> Jail/jail reimbursement impact |
| <input type="checkbox"/> Corrections costs only (not savings)                              | <input type="checkbox"/> Treatment/program impact                  |
| <input checked="" type="checkbox"/> Corrections costs and savings                          | <input checked="" type="checkbox"/> Local government impact        |
| <input checked="" type="checkbox"/> Court system impact (judges, clerks, indigent defense) | <input type="checkbox"/> Victimization impact                      |
| <input checked="" type="checkbox"/> Prosecutor impact                                      | <input type="checkbox"/> Unclear                                   |

**How long of a projection is required:**

10 years

**What is required if the impact cannot be determined:**

Assumption regarding number of affected offenders may be made.

**Impact statement is binding or requires appropriation:**

No, impact statement is advisory only.

**Source(s):**

Oregon Revised Code § 173.029

Oregon Legislative Fiscal Office. (2023). *Fiscal Impact Statement Process Overview*. Retrieved from [https://www.oregonlegislature.gov/lfo/agencyfis/01\\_FIS%20Process%20Overview.pdf](https://www.oregonlegislature.gov/lfo/agencyfis/01_FIS%20Process%20Overview.pdf)

Oregon Legislative Fiscal Office. (2023). *Instructions for Agency Fiscal Impact Statements Forms, 2023 Legislative Session*. Retrieved from [https://www.oregonlegislature.gov/lfo/agencyfis/02\\_Agency%20FIS%20Instructions.pdf](https://www.oregonlegislature.gov/lfo/agencyfis/02_Agency%20FIS%20Instructions.pdf)

Terpening, John. (2023). "Corrections Impact Statements/Fiscal Notes". Received by Meredith Farrar-Owens. 17 October 2023. Email Interview.

**An example of an impact statement from Oregon can be found in Appendix H.**

## Pennsylvania

### **Agency/organization that prepares corrections impact statements:**

Pennsylvania Commission on Sentencing<sup>47</sup>

### **Requirement:**

A rule is adopted by each chamber of the General Assembly requiring the preparation of a fiscal note by the Appropriations Committees.

Senate of Pennsylvania, Rule 12: No bill which may require an expenditure of Commonwealth funds or funds of any political subdivision or cause a loss of revenue to the Commonwealth or any political subdivision shall be given third consideration on the Calendar until it has been referred to the Appropriations Committee and a fiscal note attached thereto.

Pennsylvania House of Representatives Rule 19(A): No bill, except a General Appropriation bill or any amendments thereto, which may require an expenditure of Commonwealth funds or funds of any political subdivision or which may entail a loss of revenues overall, or to any separately established fund shall be given third consideration reading on the calendar until it has first been referred to the Appropriations Committee for a fiscal note (limited options for waiving this requirement).

### **Types of bills for which impact statement is prepared:**

Generally, a fiscal note must be prepared for any bill that may require an expenditure of funds or entail a loss of revenues overall.

### **Procedures or methods used in preparation of impact statement:**

The Pennsylvania Commission on Sentencing (PCS) provides impact analysis used for the preparation of correctional fiscal notes required by the Senate and House before the enactment of legislation. This is a blend of formal and informal activities. Under Senate and House Rules, each Appropriations Committee is required to attach a fiscal note to any bill that may require the expenditure of funds, and each committee (including oversight committees such as Judiciary) may request the assistance of state agencies. The Pennsylvania Commission on Crime and Delinquency (PCCD) is explicitly authorized under their enabling legislation to prepare prison population impact analysis upon request. However, due to circumstances over time (e.g., lack of capacity at PCCD, time delays in preparing formal prison population impact analysis, increased capacity at PCS, central role of sentencing data in preparing impact analysis, and the Commission on Sentencing being a legislative agency), the Commission on Sentencing assumed the role of providing impact analysis information, in conjunction with the Department of Corrections (DOC). For most bills, the requests are received from legislative staff informally, with the Commission providing sentence impact (disposition and duration changes) and the DOC providing associated correctional costs. For more complicated bills, and those with potentially greater impact, the

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<sup>47</sup> For the majority of bills, the Pennsylvania Commission on Sentencing projects the impact on correctional populations, and the Department of Corrections prepares information on the associated costs.



Commission will prepare a formal population impact analysis at the request of a committee Chair and include more detailed information on duration of sentences (including parole rates). The Commission, on occasion, has been required by statute to provide an impact analysis (1995 - mandate to publish projected increases to state prison population resulting from the implementation of legislation enacted during a special session on crime; 2007 - mandate to study the impact of mandatory minimum sentences).

In addition to the above, the Commission is required by statute to use a correctional population simulation model to determine resource utilization related to any changes to state guidelines (sentencing, resentencing, parole, recommitment, risk assessment) adopted by the Commission.

**What is included in the impact statement:**

- |  |  |
|--|--|
| <input type="checkbox"/> Operating costs only (no capital costs)                     | <input checked="" type="checkbox"/> Community corrections impact |
| <input checked="" type="checkbox"/> Operating costs and capital costs, if applicable | <input type="checkbox"/> Jail/jail reimbursement impact          |
| <input type="checkbox"/> Corrections costs only (not savings)                        | <input type="checkbox"/> Treatment/program impact                |
| <input checked="" type="checkbox"/> Corrections costs and savings                    | <input type="checkbox"/> Local government impact                 |
| <input type="checkbox"/> Court system impact (judges, clerks, indigent defense)      | <input type="checkbox"/> Victimization impact                    |
| <input type="checkbox"/> Prosecutor impact   | <input type="checkbox"/> Unclear                                 |

**How long of a projection is required:**

5 years, or until full implementation is reached

**What is required if the impact cannot be determined:**

“Cannot be determined” is indicated on the statement.

**Impact statement is binding or requires appropriation:**

No, impact statement is advisory only.

**Source(s):**

Senate of Pennsylvania. (2023). *Rules of the Senate of Pennsylvania*. Retrieved from <https://www.pasen.gov/rules.cfm>

Pennsylvania House of Representatives. (2023). House Resolution 1. Retrieved from <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2023&sessInd=0&billBody=H&billTyp=R&billNbr=0001&pn=0002>

Bergstrom, Mark. (2023). “Corrections Impact Statements”. Received by Meredith Farrar-Owens. 12 October 2023. Email Interview.

**An example of an impact statement from Pennsylvania can be found in Appendix H.**

## Rhode Island

### Agency/organization that prepares corrections impact statements:

Rhode Island Department of Corrections in conjunction with the State Budget Office

### Requirement:

All acts, bills and resolutions having an effect on the revenues, expenditures, fiscal liability, bed space, staff, or programs of the Department of Corrections by establishing or extending a mandatory minimum term of imprisonment that is not subject to suspension, probation or parole, excepting appropriation measures carrying specified dollar amounts, shall be accompanied by a brief explanatory statement or note which sets forth the estimated dollar effect thereof, taking into consideration additional bed space, staff, and programs required if enacted. Statements must be attached to the end of each act, bill or resolution prior to consideration of the bill. This prison impact statement shall specify the effect in dollar amounts and additional bed space, additional staff, and additional programs.

Rhode Island General Laws § 42-56-39

### Types of bills for which impact statement is prepared:

Statements are prepared for bills that establish or extend a mandatory minimum term of imprisonment which is not subject to suspension, probation, or parole.

### Procedures or methods used in preparation of impact statement:

The appropriate chairperson of the House or Senate committee may request a prison impact statement. Requests for these prison impact statements must be in a form and substance that is deemed appropriate by the chairperson and must be forwarded through the House or Senate fiscal advisor to the state budget officer who shall then be responsible, in cooperation with the Director of Corrections, for its preparation within 30 days of the request.

### What is included in the impact statement:

- |  |   |
|--|---|
| <input type="checkbox"/> Operating costs only (no capital costs)                     | <input type="checkbox"/> Community corrections impact   |
| <input checked="" type="checkbox"/> Operating costs and capital costs, if applicable | <input type="checkbox"/> Jail/jail reimbursement impact |
| <input type="checkbox"/> Corrections costs only (not savings)                        | <input type="checkbox"/> Treatment/program impact       |
| <input checked="" type="checkbox"/> Corrections costs and savings                    | <input type="checkbox"/> Local government impact        |
| <input type="checkbox"/> Court system impact (judges, clerks, indigent defense)      | <input type="checkbox"/> Victimization impact           |
| <input type="checkbox"/> Prosecutor impact   | <input type="checkbox"/> Unclear                        |

### How long of a projection is required:

3 years

### What is required if the impact cannot be determined:

Assumption regarding number of affected offenders may be made.

**Impact statement is binding or requires appropriation:**

No, impact statement is advisory only.

**Source(s):**

Rhode Island General Laws § 42-56-39

Whitney, Stephen. (2023). "Corrections Impact Statements/Fiscal Notes". Received by Meredith Farrar-Owens. 25 October 2023. Email Interview.

## South Carolina

### Agency/organization that prepares corrections impact statements:

South Carolina Legislature's Revenue and Fiscal Affairs Office with cooperation of other state agencies

### Requirement:

The principal author of legislation that would establish a new criminal offense or that would amend the sentencing provisions of an existing criminal offense may affix a statement of estimated fiscal impact of the proposed legislation. Upon request from the principal author of the legislation, the Revenue and Fiscal Affairs Office shall assist in preparing the fiscal impact statement. If a fiscal impact statement is not affixed to legislation at the time of introduction, the committee to which the legislation is referred must request a fiscal impact statement from the Revenue and Fiscal Affairs Office. The committee cannot take action on the legislation until the committee has received the fiscal impact statement. If the legislation has been amended, the committee shall request a revised fiscal impact statement. State agencies and political subdivisions must cooperate with the Revenue and Fiscal Affairs Office in preparing fiscal impact statements.

South Carolina Code § 2-7-74 (2022)

### Types of bills for which impact statement is prepared:

Statements are prepared for legislation that would establish a new criminal offense or that would amend the sentencing provisions of an existing criminal offense.

### Procedures or methods used in preparation of impact statement:

If there is no data available to predict how many individuals may be charged or convicted, the fiscal impact statement will often present information regarding the annual total cost per inmate.

### What is included in the impact statement:

- |  |  |
|--|--|
| <input type="checkbox"/> Operating costs only (no capital costs)                           | <input checked="" type="checkbox"/> Community corrections impact   |
| <input checked="" type="checkbox"/> Operating costs and capital costs, if applicable       | <input checked="" type="checkbox"/> Jail/jail reimbursement impact |
| <input type="checkbox"/> Corrections costs only (not savings)                              | <input type="checkbox"/> Treatment/program impact                  |
| <input checked="" type="checkbox"/> Corrections costs and savings                          | <input checked="" type="checkbox"/> Local government impact        |
| <input checked="" type="checkbox"/> Court system impact (judges, clerks, indigent defense) | <input type="checkbox"/> Victimization impact                      |
| <input checked="" type="checkbox"/> Prosecutor impact                                      | <input type="checkbox"/> Unclear                                   |

### How long of a projection is required:

Not specified in statute; depends on the nature of the bill and the implementation schedule.

### What is required if the impact cannot be determined:

Statement shows cost of one conviction or cost of incarcerating one offender.

**Impact statement is binding or requires appropriation:**

No, impact statement is advisory only.

**Source(s):**

South Carolina Code § 2-7-74

Jolliff, Lisa. (2023). "Corrections Impact Statements/Fiscal Notes". Received by Meredith Farrar-Owens. 23 October 2023. Email Interview.

**An example of an impact statement from South Carolina can be found in Appendix H.**

## Texas

### **Agency/organization that prepares corrections impact statements:**

Legislative Budget Board

### **Requirement:**

Texas Government Code, Section 314.001 directs the Legislative Budget Board (LBB) to establish a system of fiscal notes identifying the probable impact of each bill or resolution that authorizes or requires the expenditure or diversion of any state funds for any purpose other than those provided for in the general appropriations bill.

Under Rule 7.09 of the Texas Senate Rules, the director of the LBB determines whether an impact statement is required. In the Senate, criminal justice impact statements provide estimates for a proposal to change sanctions applicable to adults convicted of a felony crime or applicable to juveniles who have been adjudicated for misdemeanor or felony conduct.

Under Rule 4, Section 34 of the Texas House Rules, a committee chair determines whether an impact statement is required. In the House, such statements are prepared for bills applicable to adults convicted of felony crimes.

In addition, Texas Government Code § 319.021 specifies that the LBB must prepare an impact statement for each bill that proposes imposing a new court cost or fee on a person charged with a criminal offense or increasing the amount of an existing court cost or fee imposed on a person charged with a criminal offense.

### **Types of bills for which impact statement is prepared:**

Statements are prepared for bills that propose changes to felony penalties applicable to adults. For Senate bills, statements are also prepared for bills that propose changes to sanctions applicable to juveniles adjudicated for misdemeanor or felony conduct.

### **Procedures or methods used in preparation of impact statement:**

The LBB gathers impact data for fiscal notes from state agencies through a web-based Fiscal Note System (FNS). Before action can be taken by the House on a conference committee report on a bill or joint resolution, other than the general appropriations bill, a fiscal note outlining the fiscal implications and probable cost of the conference committee report shall be submitted. Senate rules require fiscal notes for all specified bills and joint resolutions. Senate rules authorize a bill to be heard without a fiscal note, but the fiscal note must be distributed before committee members can take a final vote on the measure.

**What is included in the impact statement:**

- |  |  |
|--|--|
| <input type="checkbox"/> Operating costs only (no capital costs)                           | <input checked="" type="checkbox"/> Community corrections impact   |
| <input checked="" type="checkbox"/> Operating costs and capital costs, if applicable       | <input checked="" type="checkbox"/> Jail/jail reimbursement impact |
| <input type="checkbox"/> Corrections costs only (not savings)                              | <input type="checkbox"/> Treatment/program impact                  |
| <input checked="" type="checkbox"/> Corrections costs and savings                          | <input checked="" type="checkbox"/> Local government impact        |
| <input checked="" type="checkbox"/> Court system impact (judges, clerks, indigent defense) | <input type="checkbox"/> Victimization impact                      |
| <input type="checkbox"/> Prosecutor impact   | <input type="checkbox"/> Unclear                                   |

**How long of a projection is required:**

5 years

**What is required if the impact cannot be determined:**

“Cannot be determined” is indicated on the statement.

**Impact statement is binding or requires appropriation:**

No, impact statement is advisory only.

**Source(s):**

Texas Government Code § 314.001, § 319.021

Legislative Budget Board. (2022). *Guide to Fiscal Notes – Instructions for Texas State Agencies*. Retrieved from [https://www.lbb.texas.gov/Fiscal\\_Notes/Guide\\_to\\_Fiscal\\_Notes\\_Agencies.pdf](https://www.lbb.texas.gov/Fiscal_Notes/Guide_to_Fiscal_Notes_Agencies.pdf)

Bolding, Lann. (2023). “Criminal Justice Analysis”. Received by Meredith Farrar-Owens. 25 October 2023. Email Interview.

**An example of an impact statement from Texas can be found in Appendix H.**

## Possible Options for the General Assembly

Current provisions related to corrections impact statements in Virginia have been in place since 2009. As described in the previous section, state requirements and processes for preparing corrections impact statements vary considerably from state to state. Should the General Assembly wish to revise the requirements, process, or methods by which these statements are prepared in Virginia, there are a number of options or alternatives that could be considered. This section of the report discusses many of these, most of which would require legislation to amend § 30-19.1:4 or the Appropriation Act.

### **AGENCY RESPONSIBLE FOR PREPARING ADULT CORRECTIONS IMPACT STATEMENTS**

Currently, the Virginia Criminal Sentencing Commission is designated in § 30-19.1:4 to prepare corrections impact statements for proposed legislation that may increase the state prison population.

A review of 19 other states revealed that five other states (Arkansas, Connecticut, Illinois, Kansas, and Pennsylvania) also designate a sentencing commission or council as the official preparer of corrections impact statements. In five other states (Kentucky, Mississippi, Missouri, Ohio, and Rhode Island), the Department of Corrections is responsible for such impact estimates and statements. Prior to 2001, the Department of Planning and Budget, in conjunction with the Department of Corrections and the Sentencing Commission, were charged under § 30-19.1:4 with preparing Virginia's impact statements.

In the remaining nine states, responsibility for preparing corrections impact statements is assigned to a legislative agency. In Maryland, for example, the Department of Legislative Services' Office of Policy Analysis has the primary responsibility for preparing the statements. In most of the states where a legislative agency prepares the statements, however, the agency prepares such statements with input from the affected agencies, such as the Department of Corrections, or with data provided by the state's sentencing commission or council, if one exists in the state.

Virginia's Sentencing Commission is not a policy making body. The Sentencing Commission has no role in budget development and is unaffected by decisions regarding funding for corrections legislation. The Sentencing Commission has access to a wide array of criminal justice data that may be used in the calculation of corrections impacts, including Sentencing Guidelines data and Court Case Management System (CMS) data. The Commission conducts all analyses in an objective manner.

Should the General Assembly desire to designate another agency with corrections impact statements, legislation to amend § 30-19.1:4 would be necessary.



## **ANNUAL OPERATING COST PER INMATE**

Currently, § 30-19.1:4 specifies that the Sentencing Commission must calculate the impact of legislation by determining the increase in operating costs attributable to any bill which would result in a net increase in periods of imprisonment in state adult correctional facilities. Per § 30-19.1:4, DPB provides the Sentencing Commission with the operating cost per prison inmate. In its Annual Management Information Summary Report, DOC calculates its own annual operating cost per inmate. Because they are based on different methods of calculation, the two cost figures differ. For example, for the 2023 General Assembly, DPB provided the Sentencing Commission with an annual operating cost of \$48,958. For its Management Information Summary Report for the fiscal year ending June 30, 2022, the DOC calculated a department-wide annual operating cost of \$42,432.

Should the General Assembly desire to change the source of the annual operating cost per inmate used in corrections impact statements, legislation to amend § 30-19.1:4 would be necessary.

## **NUMBER OF YEARS OF INCREASED OPERATING COSTS**

Section 30-19.1:4 specifies that, for each law enacted which results in a net increase in periods of imprisonment in state correctional facilities, a one-year appropriation shall be made from the general fund equal to the estimated increase in operating costs of such law, in current dollars, of the highest of the next six fiscal years following the effective date of the law. The current method required by § 30-19.1:4 reflects only one year of operating costs (the highest year) and does not account for the increase in operating costs across all six years of the projection.

Should the General Assembly desire an estimate of additional operating costs attributable to a bill that covers all six years of the projection, rather than the single year with the greatest impact, legislation to amend § 30-19.1:4 would be necessary.

## **METHOD FOR ESTIMATING INCREASES IN OPERATING COSTS**

While most states use an annual operating cost figure in a similar fashion to Virginia, the Illinois Sentencing Policy Advisory Council (SPAC) utilizes a somewhat different approach. To calculate the fiscal impact of a proposal on the criminal justice system, SPAC has employed a Dynamic Marginal Cost (DMC) model developed after analyzing both state and local public safety budgeting over several decades. For the past several years, SPAC's model included "step costs" from estimated changes in staffing based on estimated changes to the prison population. Marginal costs are the costs of adding additional offenders compared to maintaining the status quo. The marginal costs can include: (1) variable costs, or costs that directly relate to services (laundry, food, etc.); (2) personnel costs that change when staffing levels change; and (3) fixed costs, costs related to physical space that vary only with large service changes. The types of

costs included depends on the size of the change to the incarcerated population and if the expenditures for variable, personnel, and fixed costs change in tandem. For 2023, however, SPAC is using only the changes in variable costs (costs that directly relate to services such as laundry, food, etc.) in the incarcerated population and not estimating costs for staffing changes. Based on recent history, SPAC felt that even relatively large increases or reductions to the prison population would not result in significant staffing changes.

If the General Assembly wishes to include or exclude certain costs from the annual operating cost, as has been done recently in Illinois, legislation to amend § 30-19.1:4 would likely be necessary. The Sentencing Commission has the capability to design a marginal cost model if that is the preference of the General Assembly.

### **INCLUSION OF CAPITAL OR FIXED COSTS**

Pursuant to § 30-19.1:4, corrections impact statements include only operating costs. While four of the other 19 states reviewed also include only operating costs, the remaining states produce corrections impact statements that may also include capital costs. In several states, capital cost is only included if the projected impact on prison beds would necessitate an increase in capacity or if the projected impact exceeds a certain number of beds.

If the General Assembly wishes to include capital costs in all or some of the corrections impact statements, legislation to amend § 30-19.1:4 would be necessary.

### **INCLUSION OF POTENTIAL SAVINGS OR OFFSETS TO COSTS**

Currently, the Sentencing Commission is only required to prepare an impact statement if a bill would result in a net increase in the state inmate population. At present, the Sentencing Commission is not required by § 30-19.1:4 to prepare statements for bills that would potentially result in a net decrease in the inmate population. The Sentencing Commission, however, will conduct an impact analysis on such a bill if requested by a legislator, committee staff, or DPB.

In its review of 19 other states, the Sentencing Commission found that four states other than Virginia include only costs in their impact statements. Most of the states were found to include in the impact statements both costs and potential savings or offsets to identified costs. Generally speaking, most states prepare statements on bills that are expected to reduce the inmate population. Currently in Virginia, the General Assembly may be receiving some estimates of bed space savings directly from the DOC.

If the General Assembly would like to consistently receive impact statements on legislation that would result in bed space savings, the Sentencing Commission has the staff resources to perform this additional work. Legislators may continue to request such statements on a bill-by-bill basis, or the General Assembly may wish to standardize the preparation of such statements by amending § 30-19.1:4.

## INCLUSION OF OTHER SYSTEM COSTS

As specified in current Code, the Sentencing Commission is required to prepare impact statements if the proposed legislation may result in a net increase in the state's prison population. If the Sentencing Commission prepares a statement for a corrections impact, the Commission must include an analysis of the impact on local and regional jails, as well as state and local pretrial and community-based probation services agencies. Under this same provision, an impact statement must provide estimated operating costs for any bill that would result in a net increase in the population committed to DJJ, and any such statement must include the impact on locally-operated juvenile detention facilities.

If there are other costs that may be associated with the legislation, they are not captured in the Sentencing Commission's impact statement. Such other costs may include, for example, costs associated with changes in DOC's prison data system that may be necessitated by the bill. Such other costs currently may be provided to the General Assembly by the affected agencies in a separate document.

In reviewing the impact statements prepared in 19 other states, the Sentencing Commission found that the majority include costs other than corrections costs in their impact statements. For example, nine states prepare impact statements that include estimates of the impact on the court system. This may encompass the potential need for additional judges or clerks, or increased need for indigent defense resources. Other than Virginia, eleven states attempt to address the potential impact on probation or parole programs. Besides Virginia, six states include jail impacts. Five states include the impact on prosecutor resources and one includes impacts on treatment or education programs. Four states address potential county or local government impact. One state includes estimates of victimization costs. For three of the states reviewed, it is unclear what other costs are included in the impact statement.

Virginia's General Assembly may currently receive impact statements from a number of affected agencies, which may satisfactorily address legislators' interests in other system costs of proposed legislation. If the General Assembly wishes for additional types of system costs to be included in the Sentencing Commission's impact statements, this can be done upon request or by amending § 30-19.1:4 to expand the statutory requirements.

## LENGTH OF PROJECTION

Currently, the Sentencing Commission generates a six-year projection for corrections impact statements, as required by § 30-19.1:4. Projection periods vary across the states, with periods ranging from three years to more than 10 years. Depending on the nature of the proposed legislation, Illinois may generate a projection for as long as 50 years. The most common projection period is five years.

To change the six-year projection currently used, legislation to amend § 30-19.1:4 would be necessary.

## WHEN THE IMPACT CANNOT BE DETERMINED

The Sentencing Commission will produce a corrections impact projection whenever possible. Due to the nature of certain legislative proposals, the Sentencing Commission may be unable to estimate the impact on the prison population. Examples of legislation for which the impact likely cannot be determined include bills that create an entirely new criminal offense and bills that expand the elements defining an existing offense. Often, data is insufficient or lacks sufficient detail to predict the number of additional convictions that may result if the legislation were to be enacted. If the number of additional convictions cannot be determined, the impact of the legislation cannot be estimated. In 2023, the Sentencing Commission was able to estimate the impact for approximately 20% of the impact statements the agency prepared. The estimated impact could not be quantified for approximately 80% of the impact statements. When the impact cannot be quantified, the Sentencing Commission will provide as much background information as possible, including sentencing information for a similar offense defined in existing Code.

When the Sentencing Commission cannot quantify the impact on the state inmate population, § 30-19.1:4 requires that the impact statement state such and the words "cannot be determined" must be printed on the face of the bill. When this occurs, language in the Appropriation Act further requires the Commission to assign a minimum fiscal impact of \$50,000. In 2023, \$50,000 is roughly equivalent to the annual operating cost of one prison bed. Thus, the \$50,000 minimum fiscal impact approximates the cost of the legislation if one offender were sentenced to prison for a one-year term.

Senate Bill 1335 and House Bill 1914, introduced during the 2023 General Assembly, would have changed the current requirements for legislation proposes a new felony offense. Under these bills, the default impact amount must be calculated by using the formula specified in the legislation. In essence, the formula generates the average number of prison admissions across an offense class (e.g., average number of prison admissions for a Class 5 felony offense defined in current Code). The legislation then specifies that the estimated number of affected offenders must be multiplied by twice the per capita cost for housing inmates as reported by the DOC. As proposed, this amount would replace the minimum fiscal impact of \$50,000 for bills proposing new felony offenses. The formula specified in Senate Bill 1335 and House Bill 1914 may not accurately reflect the rate at which a particular offense or type of offense in the same class results in prison admissions. This may result in an over- or under-estimation of the impact. Moreover, the formula does not address sentence length or length-of-stay in the state prison population during the forecast horizon. Thus, it does not account for the "stacking effect" associated with admissions to DOC given multi-year sentences.

Of the 19 other states examined, the Sentencing Commission could not identify a state that specifies a formula for estimating impacts in statutory language, as proposed by Senate Bill 1335 and House Bill 1914.

Among the 19 states reviewed for this report, when the corrections impact cannot be determined, eight states, in addition to Virginia, include a notation to that effect in the impact statement. Six states appear to proceed with a corrections impact calculation based on some sort of assumption (e.g., if 10 offenders were convicted of the proposed offense). In three other states, the impact statement includes information as to the cost for each additional conviction for the new offense or each additional defendant sentenced to the Department of Corrections. For two states, the approach used when the impact cannot be determined is unclear.

The way in which minimum or default impacts are determined is entirely within the discretion of the General Assembly. If the General Assembly wishes to modify the \$50,000 minimum impact used today, changes to the Appropriation Act, specifically the Sentencing Commission's Appropriation Item, will be necessary (see Item 52 of Chapter 1 of the Acts of Assembly of 2023, Special Session I).

## **APPROPRIATION REQUIREMENT**

Currently, in Virginia, § 30-19.1:4 requires an appropriation equivalent to the increase in operating costs identified by the Sentencing Commission (or, for impacts on the juvenile system, the Department of Juvenile Justice) for the single year with the largest increase in operating costs during the six years following enactment of the bill. This appropriation is deposited into the Corrections Special Reserve Fund and is not added to the operating budgets of either DOC or DJJ.

In its multi-state review, the Sentencing Commission could identify only one other state where an appropriation is required based on the corrections impact statement. In the state of Colorado, Section 2-2-703 specifies that “money sufficient to cover such increased capital construction costs and increased operating costs for the first five fiscal years following the effective date of the bill must be estimated by the appropriations committee, and after consideration of such estimate the General Assembly shall make a determination as to the amount of money sufficient to cover the costs, and such money must be appropriated in the bill in the form of a statutory appropriation from the general fund in the years affected.” In 2022, Colorado’s appropriation requirement was suspended until July 1, 2025 (House Bill 22-1330). In all other states examined, the corrections impact statements appear to be advisory only and any appropriation based on the impact statement appears to be optional.

If the General Assembly desires to remove the appropriation requirement, legislation to amend § 30-19.1:4 would be necessary.

## IMPACTS ON STATE JUVENILE JUSTICE AGENCY

In Virginia, § 30-19.1:4 requires DPB, in conjunction with DJJ, to produce an impact statement reflecting the operating costs attributable to and necessary appropriations for any bill that would result in a net increase in periods of commitment to the custody of the Department of Juvenile Justice.

In its review of other states' impact requirements, the Sentencing Commission could not identify any state in which the statutory requirement includes any reference to the impact on the juvenile justice system. This does not necessarily mean that juvenile justice impact statements are not produced in other states; it is only that the specific requirement could not be found in statutory language as it is in Virginia.

Although § 30-19.1:4 specifies that DPB, together with DJJ, is to produce the juvenile system impact statement, DPB is not actively involved in this process. DJJ provides all of the impact information directly to the Sentencing Commission. For the convenience of legislators, the juvenile impact information is incorporated into the Sentencing Commission's impact statement and a combined statement is submitted to the General Assembly.

Currently, Virginia requires an appropriation for bills that result in a net increase in state correctional facilities or a net increase in commitment to the custody of the DJJ. However, the \$50,000 minimum fiscal impact does not apply to bills that have an unknown impact on DJJ. Current Code specifies, "For any fiscal impact statement prepared by the Virginia Criminal Sentencing Commission pursuant to § 30-19.1:4, Code of Virginia, for which the commission does not have sufficient information to project the impact, the commission shall assign a minimum fiscal impact of \$50,000 to the bill..." Because the Sentencing Commission is not responsible for preparing the juvenile justice impact statements, the \$50,000 minimum fiscal impact does not apply to bills that may increase costs for the juvenile justice system.

For a number of years, DJJ has provided very limited information for corrections impact statements required by § 30-19.1:4. DJJ has provided statements indicating only that the legislation will have no impact on the juvenile system or that the legislation may have an impact but that impact cannot be determined. The DJJ has not provided any estimates of potential impact, nor has it provided any background information associated with a bill (such as the number of juvenile intake cases or admissions attributable to the specified offense or a similar offense) in at least a decade. Therefore, the information provided by DJJ for the impact statements required by § 30-19.1:4 may be of limited value to legislators.

Should the General Assembly wish to expand the requirement for the \$50,000 minimum fiscal impact to make it applicable to the impact on Virginia's juvenile justice system, changes to § 30-19.1:4 or the Appropriation Act would be required.

## CONCLUSION

As discussed in this section, the General Assembly has a number of options that members may consider in regards to corrections impact statements, if the General Assembly desires to change the current requirements, processes, or methods.

Virginia is not unique in having the state's Sentencing Commission prepare corrections impact statements, as sentencing commissions or councils in several states are designated with this task. Also, the projection period used in Virginia (six years) is roughly in the middle of the projection periods used in other states, which range from three to ten years (with the exception of Illinois). Following enactment of legislation in Colorado in 2022, Virginia is currently the only state among the states examined for this report with an appropriation requirement in effect.

Unlike Virginia, most states examined include capital costs for at least some bills (e.g., if a bill is likely to increase the need for prison beds by a specified number or more). The majority of the states examined appear to require estimated savings (or offsets to costs) to be included in their impact statements. Most states reviewed include other system costs, not just prison operating costs, in their impact statements (court caseload costs, for example). In Virginia, the Sentencing Commission is not currently required to produce statements that capture potential savings or other system costs.

Should the General Assembly wish to modify current requirements or the current process, most such changes would require legislation to amend § 30-19.1:4 or the Appropriation Act. The Sentencing Commission makes no specific recommendations regarding Virginia's corrections impact statements and will continue to produce statements per requirements specified by the Virginia General Assembly.





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## Appendix A

### Code of Virginia § 30-19.1:4

### Regarding Corrections Impact Statements

#### **§ 30-19.1:4. Increase in terms of imprisonment or commitment; fiscal impact statements; appropriations for operating costs.**

- A. The Virginia Criminal Sentencing Commission shall prepare a fiscal impact statement reflecting the operating costs attributable to and necessary appropriations for any bill which would result in a net increase in periods of imprisonment in state adult correctional facilities. The Department of Planning and Budget shall annually provide the Virginia Criminal Sentencing Commission with the operating cost per inmate.
- B. The Department of Planning and Budget, in conjunction with the Department of Juvenile Justice, shall prepare a fiscal impact statement reflecting the operating costs attributable to and necessary appropriations for any bill that would result in a net increase in periods of commitment to the custody of the Department of Juvenile Justice.
- C. The requirement for a fiscal impact statement includes, but is not limited to, those bills which add new crimes for which imprisonment or commitment is authorized, increase the periods of imprisonment or commitment authorized for existing crimes, impose minimum or mandatory minimum terms of imprisonment or commitment, or modify the law governing release of prisoners or juveniles in such a way that the time served in prison, or the time committed to the custody of the Department of Juvenile Justice, will increase.
- D. The fiscal impact statement of any bill introduced on or after July 1, 2002, that would result in a net increase in periods of imprisonment in state correctional facilities or periods of commitment to the custody of the Department of Juvenile Justice, shall include an analysis of the fiscal impact on local and regional jails, state and local pretrial and community-based probation services agencies and juvenile detention facilities.
- E. The amount of the estimated appropriation reflected in the fiscal impact statement shall be printed on the face of each such bill, but shall not be codified. If the agency responsible for preparing the fiscal impact statement does not have sufficient information to project the impact, the fiscal impact statement shall state this, and the words "Cannot be determined" shall be printed on the face of each such bill.
- F. The fiscal impact statement shall include, but not be limited to, details as to any increase or decrease in the offender population. Statements prepared by the Virginia Criminal Sentencing Commission shall detail any necessary adjustments in guideline midpoints for the crime or crimes affected by the bill as well as adjustments in guideline midpoints for other crimes affected by the implementation of the bill that, in the opinion of the Commission, are necessary and appropriate.

- G. The agency preparing the fiscal impact statement shall forward copies of such impact statements to the Clerk of the House of Delegates and the Clerk of the Senate for transmittal to each patron of the legislation and to the chairman of each committee of the General Assembly to consider the legislation.
- H. For each law enacted which results in a net increase in periods of imprisonment in state correctional facilities or a net increase in periods of commitment or the time committed to the custody of the Department of Juvenile Justice, a one-year appropriation shall be made from the general fund equal to the estimated increase in operating costs of such law, in current dollars, of the highest of the next six fiscal years following the effective date of the law. "Operating costs" means all costs other than capital outlay costs.
- I. The Corrections Special Reserve Fund (the Fund) is hereby established as a nonreverting special fund on the books of the Comptroller. The Fund shall consist of all moneys appropriated by the General Assembly under the provisions of this section and all interest thereon. Any moneys deposited in the Fund shall remain in the Fund at the end of the biennium. Moneys in the Fund shall be expended solely for capital expenses, including the cost of planning or preplanning studies that may be required to initiate capital outlay projects.

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## Appendix B

### Chapter 1 of the Acts of Assembly of 2023, Special Session I (Appropriation Act)

#### Item 52

#### Virginia Criminal Sentencing Commission

Authority: Title 17.1, Chapter 8, Code of Virginia

- A. For any fiscal impact statement prepared by the Virginia Criminal Sentencing Commission pursuant to § 30-19.1:4, Code of Virginia, for which the commission does not have sufficient information to project the impact, the commission shall assign a minimum fiscal impact of \$50,000 to the bill and this amount shall be printed on the face of each such bill but shall not be codified. The provisions of § 30-19.1:4, paragraph H. shall be applicable to any such bill.
  
- B. The clerk of each circuit court shall provide the Virginia Criminal Sentencing Commission case data in an electronic format from its own case management system or the statewide Circuit Case Management System. If the statewide Circuit Case Management System is used by the clerk, when requested by the Commission, the Executive Secretary of the Supreme Court shall provide for the transfer of such data to the Commission. The Commission may use the data for research, evaluation, or statistical purposes only and shall ensure the confidentiality and security of the data. The Commission shall only publish statistical reports and analyses based on this data as needed for its annual reports or for other reports as required by the General Assembly. The Commission shall not publish personal or case identifying information, including names, social security numbers and dates of birth, that may be included in the data from a case management system. Upon transfer to the Virginia Criminal Sentencing Commission, such data shall not be subject to the Virginia Freedom of Information Act. Except for the publishing of personal or case identifying information, including names, social security numbers and dates of birth, the restrictions in this section shall not prohibit the Commission from sharing aggregate data when requested by a member of the General Assembly, the Office of the Attorney General, the Office of the Governor, or a member of the Governor's Cabinet.

## Appendix C

### Letter from Senate Clerk's Office regarding Referral of Senate Bill 1335 for Study

COMMONWEALTH OF VIRGINIA

SUSAN CLARKE SCHAAR  
CLERK OF THE SENATE  
POST OFFICE BOX 396  
RICHMOND, VIRGINIA 23218



SENATE

March 24, 2023

The Honorable Edward L. Hogshire  
Chair, Virginia Criminal Sentencing Commission  
100 N. Ninth Street, 5<sup>th</sup> Floor  
Richmond, Virginia 23219

Dear Judge Hogshire:

This is to inform you that, pursuant to Rule 20 (o) of the Rules of the Senate of Virginia, the Senate Committee on Finance and Appropriations has referred the subject matter contained in Senate Bill 1335 to the Virginia Criminal Sentencing Commission for study. It is requested that the appropriate committee co-chairs and bill patron receive a written report, with a copy to this office, by November 1, 2023.

With kind regards, I am

Sincerely yours,

A handwritten signature in cursive script that reads "Susan Clarke Schaar".

Susan Clarke Schaar

SCS:gc

cc: Sen. Janet D. Howell, Co-Chair, Senate Committee on Finance and Appropriations  
Sen. George L. Barker, Co-Chair, Senate Committee on Finance and Appropriations  
Sen. Joseph D. Morrissey, Patron of SB 1335  
Amigo Wade, Director, Division of Legislative Services  
April Kees, Director, Senate Finance and Appropriations Committee  
Meredith Farrar-Owens, Director, Virginia Criminal Sentencing Commission

# Appendix D

## Senate Bill 1335 (2023 General Assembly)

### As introduced

2023 SESSION		INTRODUCED
23103106D	<b>SENATE BILL NO. 1335</b>	<b>INTRODUCED</b>  SB1335
1	Offered January 11, 2023	
2	Prefiled January 11, 2023	
3	<i>A BILL to amend and reenact § 30-19.1:4 of the Code of Virginia, relating to fiscal impact statements;</i>	
4	<i>formula for estimated appropriations.</i>	
5	_____	
6	Patron—Morrissey	
7	_____	
8	Referred to Committee on Finance and Appropriations	
9	_____	
10	<b>Be it enacted by the General Assembly of Virginia:</b>	
11	<b>1. That § 30-19.1:4 of the Code of Virginia is amended and reenacted as follows:</b>	
12	<b>§ 30-19.1:4. Increase in terms of imprisonment or commitment; fiscal impact statements;</b>	
13	<b>appropriations for operating costs.</b>	
14	A. The Virginia Criminal Sentencing Commission shall prepare a fiscal impact statement reflecting	
15	the operating costs attributable to and necessary appropriations for any bill which would result in a net	
16	increase in periods of imprisonment in state adult correctional facilities. The Department of Planning and	
17	Budget shall annually provide the Virginia Criminal Sentencing Commission with the operating cost per	
18	inmate.	
19	B. The Department of Planning and Budget, in conjunction with the Department of Juvenile Justice,	
20	shall prepare a fiscal impact statement reflecting the operating costs attributable to and necessary	
21	appropriations for any bill that would result in a net increase in periods of commitment to the custody	
22	of the Department of Juvenile Justice.	
23	C. The requirement for a fiscal impact statement includes, but is not limited to, those bills which add	
24	new crimes for which imprisonment or commitment is authorized, increase the periods of imprisonment	
25	or commitment authorized for existing crimes, impose minimum or mandatory minimum terms of	
26	imprisonment or commitment, or modify the law governing release of prisoners or juveniles in such a	
27	way that the time served in prison, or the time committed to the custody of the Department of Juvenile	
28	Justice, will increase.	
29	D. The fiscal impact statement of any bill introduced on or after July 1, 2002, that would result in a	
30	net increase in periods of imprisonment in state correctional facilities or periods of commitment to the	
31	custody of the Department of Juvenile Justice, shall include an analysis of the fiscal impact on local and	
32	regional jails, state and local pretrial and community-based probation services agencies and juvenile	
33	detention facilities.	
34	E. The amount of the estimated appropriation reflected in the fiscal impact statement shall be printed	
35	on the face of each such bill, but shall not be codified. If the agency responsible for preparing the fiscal	
36	impact statement does not have sufficient information to project the impact, the fiscal impact statement	
37	shall state this, and the words "Cannot be determined" shall be printed on the face of each such bill. <i>In</i>	
38	<i>the case of any bill that adds a new felony for which imprisonment or commitment is authorized, the</i>	
39	<i>estimated appropriation reflected in the fiscal impact statement shall be determined by multiplying twice</i>	
40	<i>the Department-wide per capita cost of housing inmates, as reported in the Virginia Department of</i>	
41	<i>Corrections Annual Management Information Summary Report published in that fiscal year previous to</i>	
42	<i>the General Assembly session for which such bill has been filed, by the estimated increase in persons</i>	
43	<i>convicted of and imprisoned for the new felony. The estimated increase in inmates shall be calculated</i>	
44	<i>using a fraction the numerator of which is 1 and the denominator of which is n multiplied by t, where</i>	
45	<i>"n" equals the total number of felonies codified within the relevant class and "t" equals the total number</i>	
46	<i>of persons convicted of and imprisoned for any felony within the relevant class during the fiscal year</i>	
47	<i>previous to the General Assembly session for which such bill has been filed.</i>	
48	F. The fiscal impact statement shall include, but not be limited to, details as to any increase or	
49	decrease in the offender population. Statements prepared by the Virginia Criminal Sentencing	
50	Commission shall detail any necessary adjustments in guideline midpoints for the crime or crimes	
51	affected by the bill as well as adjustments in guideline midpoints for other crimes affected by the	
52	implementation of the bill that, in the opinion of the Commission, are necessary and appropriate.	
53	G. The agency preparing the fiscal impact statement shall forward copies of such impact statements	
54	to the Clerk of the House of Delegates and the Clerk of the Senate for transmittal to each patron of the	
55	legislation and to the chairman of each committee of the General Assembly to consider the legislation.	
56	H. For each law enacted which results in a net increase in periods of imprisonment in state	
57	correctional facilities or a net increase in periods of commitment or the time committed to the custody	
58	of the Department of Juvenile Justice, a one-year appropriation shall be made from the general fund	

1/31/23 7:45

SB1335

2 of 2

59 equal to the estimated increase in operating costs of such law, in current dollars, of the highest of the  
60 next six fiscal years following the effective date of the law. "Operating costs" means all costs other than  
61 capital outlay costs.

62 I. The Corrections Special Reserve Fund (the Fund) is hereby established as a nonreverting special  
63 fund on the books of the Comptroller. The Fund shall consist of all moneys appropriated by the General  
64 Assembly under the provisions of this section and all interest thereon. Any moneys deposited in the  
65 Fund shall remain in the Fund at the end of the biennium. Moneys in the Fund shall be expended solely  
66 for capital expenses, including the cost of planning or preplanning studies that may be required to  
67 initiate capital outlay projects.

# Appendix E

## Example of Corrections Impact Statement

### Prepared by the Virginia Criminal Sentencing Commission for which the Impact Cannot Be Determined



#### Fiscal Impact Statement for Proposed Legislation

*Virginia Criminal Sentencing Commission*

#### Senate Bill No. 1396

#### Floor Amendment in the Nature of a Substitute

*(Patrons Prior to Substitute –Stuart and DeSteph[SB1296])*

LD #: 23107160

Date: 02/17/2023

Topic: Organized retail theft

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$50,000 \*
- **Local Adult Correctional Facilities:**  
Cannot be determined
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Direct Care:**  
Cannot be determined \*\*
- **Juvenile Detention Facilities:**  
Cannot be determined \*\*

\*\* Provided by the Department of Juvenile Justice

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1-4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

#### Summary of Proposed Legislation:

The proposal adds § 18.2-103.1 to define the crime of organized retail theft, making it a Class 3 felony for any person who conspires or acts in concert with another person to commit simple larceny of retail property from one or more retail mercantile establishments, with a value exceeding \$5,000 aggregated over a 90-day period, with the intent to sell such retail property for monetary or other gain, and who takes or causes such retail property to be placed in the control of a retail property fence or other person and either (i) receives or possesses such retail property while knowing or having reasonable grounds to believe the property was unlawfully obtained or (ii) conspires or acts in concert with two or more other persons as an organizer, manager, etc. to engage for profit in a scheme for the transfer or sale of such retail property.

The proposal adds organized retail theft to 1) the list of offenses that are defined as predicate criminal acts for the purpose of criminal street gang provisions (§ 18.2-46.1), and 2) the list of offenses defined as racketeering activity (§ 18.2-513). Penalties for gang-related offenses range from a Class 1 misdemeanor to a Class 3 felony, while penalties for racketeering range from a Class 6 felony to a Class 2 felony.

Currently, under § 18.2-23, any person who conspires with another to commit larceny or assists another in the performance of a larceny, where the aggregate value of the goods or merchandise involved is \$1,000 or more, is guilty of a felony punishable by imprisonment of 1 to 20 years. A violation of § 18.2-23 constitutes a separate and distinct felony.



**Analysis:**

Existing data sources do not contain sufficient detail to estimate the number of additional convictions that may result from enactment of other aspects of the proposal. However, such individuals may be sentenced similarly to those convicted under the existing provisions (see table below).

**Offenders Convicted of Select Felony Offenses, FY2017-FY2022**

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Participation in criminal act for benefit of gang (§ 18.2-46.2) – Class 5 felony <sup>1</sup>	65	21.5%	13.8%	6.0 mos.	64.6%	2.8 yrs.
Participation in criminal act for benefit of gang w/juv. member (§ 18.2-46.2) – Class 4 felony <sup>1</sup>	12	8.3%	8.3%	6.0 mos.	83.3%	2.2 yrs.
Conspire to commit or assist in larceny with agg. value >=\$1,000 (§ 18.2-23) – Felony 1-20 years <sup>2</sup>	110	23.6%	55.5%	3.4 mos.	20.9%	1.5 yrs.
Racketeering, 1 <sup>st</sup> offense (§ 18.2-514) – Felony 5-40 years <sup>2</sup>	89	2.2%	6.7%	4.0 mos.	91.0%	3.5 yrs.
Racketeering, 2 <sup>nd</sup> /sub. offense (§ 18.2-514) – Class 2 felony <sup>2</sup>	0	N/A	N/A	N/A	N/A	N/A

Note: Analysis is based on cases in which the specified offense was the primary, or most serious, offense at sentencing.

<sup>1</sup>Source: Virginia Criminal Sentencing Commission, Sentencing Guidelines Data System, FY2021-FY2022

<sup>2</sup>Source: Supreme Court of Virginia - Circuit Court Case Management System (CMS), FY2021-FY2022

**Impact of Proposed Legislation:**

**State adult correctional facilities.** By creating a new felony and expanding the applicability of existing criminal offenses defined under §§ 18.2-46.1 and § 18.2-513, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. However, data do not contain sufficient detail to estimate the number of individuals likely to be affected by the proposal. Therefore, the magnitude of the impact cannot be determined.

**Local adult correctional facilities.** Similarly, the impact of the proposal on local-responsible (jail) bed space needs cannot be determined.

**Adult community corrections resources.** The proposal may increase the need for community corrections resources; however, the potential impact on community corrections programs cannot be quantified.

**Virginia’s Sentencing Guidelines.** As a new felony, convictions under § 18.2-103.1 would not be covered by the Sentencing Guidelines as the primary (most serious) offense. The Guidelines cover two gang-related offenses under § 18.2-46.2. The Guidelines do not cover other gang offenses or racketeering offenses when the offense is the primary, or most serious, offense in a case. Convictions not covered by the Guidelines as a primary offense may augment the Guidelines recommendation (as additional offenses) if the most serious offense at sentencing is covered by the Guidelines.

**Juvenile direct care.** According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal’s impact on the bed space needs of juvenile detention facilities cannot be determined.



*Fiscal Impact Statement – LD# 23107160 (continued)*

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**Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.**

**Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

retailtheft07\_7160

## **Appendix F**

### **Background Information on the Secretary of Public Safety and Homeland Security’s Committee on Offender Population Forecasting**

Forecasts of persons confined in state and local correctional facilities are essential for criminal justice budgeting and planning in Virginia. The forecasts are typically used to estimate operating expenses and future capital needs and to assess the impact of current and proposed criminal justice policies. The Secretary of Public Safety and Homeland Security oversees the forecasting process and, as required by the Appropriation Act, presents updated forecasts annually to the Governor and the Chairmen/Chairwomen of the House Appropriations Committee, the Senate Finance and Appropriations Committee, the House Courts of Justice Committee, and the Senate Judiciary Committee.

To produce the offender forecasts, the Secretary’s Office utilizes an approach known as “consensus forecasting.” First implemented in Virginia in the late 1980s, consensus forecasting is an open, participative approach that brings together policy makers, administrators, and technical experts from many state agencies across all branches of state government. The objective is to ensure that key policy makers and administrators in the criminal justice system have input into the forecast. Moreover, the process is intended to promote general understanding of the forecast and the assumptions that drive it.

Since 2006, the consensus forecasting process has involved three committees or work groups: the Technical Advisory Committee, the Secretary’s Work Group, and the Policy Committee. The Technical Advisory Committee is composed of experts in statistical and quantitative methods from several agencies. Analysts from particular agencies are tasked with developing offender forecasts. Select forecasts are recommended by the Technical Advisory Committee for consideration by the Secretary’s Work Group. Work Group members include deputy directors and senior managers of criminal justice and budget agencies, as well as staff of the House Appropriations and Senate Finance Committees. Normally meeting throughout the development of the forecasts, the Work Group provides guidance to the Technical Advisory Committee, discusses detailed aspects of the projections, and directs technical staff to provide additional data needed for decision making. After thorough evaluation of each forecast, the Work Group makes recommendations to the Secretary’s Policy Committee. Led by the Secretary, the Policy Committee reviews the various forecasts and selects the official forecast for each population. This Committee also considers the effects of emerging trends or recent policy changes and makes adjustments to the forecasts as it deems appropriate. The Policy Committee is made up of agency directors, members of the General Assembly, and top-level officials from Virginia’s executive, legislative, and judicial branches. Each year, at least one prosecutor, sheriff, police chief, and jail administrator are invited to serve on the Policy Committee to represent their respective associations. Through the consensus process, a forecast

is produced and approved for each of the four major offender populations: state-responsible inmate (prison) population, local-responsible jail population, juvenile correctional center/direct population and the population of juveniles in locally-operated juvenile detention homes).

The most report of Offender Population Forecasting committee can be found on the General Assembly's website at <https://rga.lis.virginia.gov/Published/2022/RD622/PDF> .

# Appendix G

## Example of Corrections Impact Statement

### Prepared by the Virginia Criminal Sentencing Commission with Calculated Impact



#### Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

#### House Bill No. 1642 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Kilgore)

LD#: 23104469

Date: 01/13/2023

Topic: Felony homicide

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
At least \$255,020 (5 beds)\*
- **Local Adult Correctional Facilities:**  
None (\$0)
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Direct Care:**  
Cannot be determined\*\*
- **Juvenile Detention Facilities:**  
Cannot be determined\*\*

\*\* Provided by the Department of Juvenile Justice

\* Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

#### Summary of Proposed Legislation:

The proposal amends § 18.2-33 to expand the definition of felony homicide. Under the proposal, a person would be guilty of felony homicide if the felonious act resulting in the killing of another involved the manufacture, sale, gift, or distribution of a Schedule I or II controlled substance to another and such other person's use of the controlled substance results in his death, regardless of the time or place death occurred in relation to the commission of the underlying felony. Felony homicide, constituting a second-degree murder, is punishable by imprisonment of 5 to 40 years. The proposal provides a reduced penalty (Class 5 felony) under certain conditions if the drug was distributed only as an accommodation.

The proposal is precipitated by a Virginia Court of Appeals decision relating to felony murder convictions in cases involving drug overdoses. In 2013, the Virginia Court of Appeals reversed a conviction of felony murder related to the distribution and use of ecstasy and ruled that the "time and place elements of the felony-murder rule were not established" in that case (*Woodard v. Commonwealth*, 61 Va. App. 567, 739 S.E.2d 220 (2013)). In *Woodard*, the Court ruled that a conviction under § 18.2-33 for a death caused by a controlled substance requires that the killing be so closely related in time, place, and causal connection as to be part of the same felonious criminal enterprise. The proposal would allow offenders who manufacture, distribute, etc., a Schedule I or II controlled substance to be convicted of felony homicide if the recipient's use of the drug was the proximate cause of the death, regardless of the time or place death occurred in relation to the commission of the underlying felony.

#### Analysis:

According to the Office of the Chief Medical Examiner, 1,627 individuals died in the Commonwealth during 2019 as the result of drug overdoses. This figure increased to 2,309 in 2020 and 2,667 in 2021.<sup>1</sup>

<sup>1</sup> <https://www.vdh.virginia.gov/content/uploads/sites/18/2022/07/Quarterly-Drug-Death-Report-FINAL-Q1-2022.pdf> (accessed October 6, 2022)

*Fiscal Impact Statement – LD # 23104469 (continued)*

The causes of death for these individuals included prescription drugs, over-the-counter drugs, illegal (street) drugs, alcohol, inhalants, and other poisons.

Examination of Sentencing Commission data for FY2017 through FY2022 indicates that judges sentenced 30 individuals, convicted of manufacturing, distributing, etc., Schedule I or II drugs, to terms of incarceration that exceeded what was recommended by Sentencing Guidelines and cited a death as the reason for the upward departure. All of these individuals received a state-responsible (prison) term for which the median sentence was five years. There may have been other cases during the six-year period in which the manufacture, distribution, etc., of a Schedule I or II drug was associated with a death; however, additional cases could not be identified with the available data.

Individuals convicted of felony homicide under the proposed changes to § 18.2-33 may be sentenced similarly to offenders sentenced under existing provisions. According to the Sentencing Guidelines Database for FY2017 through FY2022, 73 individuals were convicted of felony murder under § 18.2-33 (as the primary, or most serious offense, at sentencing). All but one of these offenders were sentenced to a state-responsible (prison) term for which the median sentence was 20.5 years. These data do not indicate if any of the deaths were associated with the use of drugs; however, three of the individuals were also convicted of selling a Schedule I or II drug as an additional offense.

#### **Impact of Proposed Legislation:**

**State adult correctional facilities.** Under current law, offenders whose manufacture, distribution, etc., of a Schedule I or II drug results in the unintentional death of another may only be convicted of felony homicide if the death is so closely related in time, place, and causal connection as to be part of the same felonious criminal enterprise (*Woodard v. Commonwealth*, 2013). The proposal would allow offenders who manufacture, etc., a Schedule I or II drug to be convicted of felony homicide (punishable by up to 40 years imprisonment) if the recipient's use of the drug was the proximate cause of the death, regardless of the time or place death occurred in relation to the commission of the underlying felony. If passed, the new law would take precedence over the decision in *Woodard v. Commonwealth* and allow felony prosecutions and convictions for such acts to resume. By expanding the applicability of felony homicide to additional circumstances beyond what is currently allowed by law, the proposal will likely increase the future state-responsible (prison) bed space needs of the Commonwealth above what would otherwise be needed. The impact is estimated to be at least five beds statewide by FY2029. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$255,020. The proposal may have additional impact beyond the six-year forecast window required by § 30-19.1:4.

#### **Estimated Six-Year Impact in State-Responsible (Prison) Beds**

FY24	FY25	FY26	FY27	FY28	FY29
0	0	0	1	3	5

**Local adult correctional facilities.** The proposal is not expected to increase the local-responsible (jail) bed space needs, as all of the identified offenders who could be affected by the proposed change currently receive a state-responsible (prison) term.

**Adult community corrections resources.** The impact on community corrections resources cannot be determined. Affected offenders can currently be convicted of a drug offense; however, the proposal may result in longer terms of incarceration for some offenders who would also be convicted of felony murder if the proposal were enacted. This would delay the need for services as these individuals would serve longer in prison prior to being released to the community.

**Virginia's Sentencing Guidelines.** Felony homicide convictions under § 18.2-33 are covered by the Sentencing Guidelines. No adjustment to the Guidelines would be necessary under the proposal.

*Fiscal Impact Statement – LD # 23104469 (continued)*

**Juvenile direct care.** According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

---

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$255,020 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

**Assumptions underlying the analysis include:**

**General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2022.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety and Homeland Security's Committee on Inmate Forecasting and approved in 2022.
3. Cost per prison bed was assumed to be \$48,958 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*

**Assumptions relating to offenders**

1. It was assumed that prosecutors would charge all identified eligible offenders with felony homicide (§ 18.2-33) as proposed.
2. Analysis is based on offenders convicted under § 18.2-248(C) for manufacturing, distributing, etc., a Schedule I/II drug in whose cases the judge cited a death as the reason for sentencing above the Guidelines recommendation.

**Assumptions relating to sentencing and time served**

1. The impact of the proposed legislation, which would be effective on July 1, 2023, is phased in to account for case processing time.
2. Offenders affected by the proposal were assumed to receive sentences similar to offenders currently convicted of felony homicide (§ 18.2-33).
3. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of February 28, 2020. At that time, felons could earn a maximum of 4.5 days for every 30 days served. Beginning July 1, 2022, most nonviolent felons were eligible for higher rates of earned sentence credits (up to 15 days for every 30 days served). To estimate the earning rates for sale, distribution, etc. of Schedule I/II drug offenders affected by the proposed legislation, the Sentencing Commission examined the percentage of offenders earning in each of the four levels of sentence credits that existed on February 28, 2020, and then applied those percentages to the four levels of sentence credits available for these offenders as of July 1, 2022. For offenders sentenced during the forecast horizon, the overall average rate of sentence credits earned by these individuals was estimated to be 23.5%. For second-degree/felony murder, this rate was 7.9%.

drugsale09\_4469

## **Appendix H**

# **Examples of Corrections Impact Statements from Other States**





## ARKANSAS SENTENCING COMMISSION

1302 Pike Avenue, Suite E • North Little Rock, AR 72114

Phone: (501) 682-5001 • Fax: (501) 682-5018

### Impact Assessment for SB495 Sponsored by Senator Gilmore

**Subtitle** TO CREATE THE PROTECT ARKANSAS ACT; TO AMEND ARKANSAS LAW CONCERNING SENTENCING AND PAROLE; TO AMEND ARKANSAS LAW CONCERNING CERTAIN CRIMINAL OFFENSES; AND TO CREATE THE LEGISLATIVE RECIDIVISM REDUCTION TASK FORCE.

**Impact Summary**<sup>1</sup> Cannot be determined. Due to the inclusion of multiple provisions both increasing and decreasing the projected necessary correctional resources of the state, the cumulative impact of the proposed bill cannot be determined.

**Change from Current Law**<sup>2</sup> The proposed bill amends various provisions in the Arkansas Code Annotated pertaining to criminal procedure, criminal offenses, release from confinement, and the duties and responsibilities of state agencies or entities related to criminal justice. For purposes of this impact assessment, only a brief summary of provisions impacting prison population will be provided.

The proposed bill replaces the current structure by which inmates are released from prison. Under current law, release is based on a combination of good time and statutory parole eligibility. Statutory parole eligibility is based on the offense for which the inmate was sentenced and the inmate's criminal history. This can range from being eligible for release after serving approximately one-sixth of his or her sentence to being required to serve the entire term of imprisonment imposed by the sentencing court.

Under the proposed bill, a defendant's release eligibility is determined based on maximum amount of earned release credits he or she is eligible to earn against his or her period of incarceration. Offenses defined as a felony ineligible to receive earned release credits are ineligible for release prior to serving the entire period of incarceration imposed by the sentencing court. Offenses defined as a restricted release felony can earn release credits of up to fifteen percent of the sentence imposed by the sentencing court unless the defendant has previously been convicted of a felony ineligible to receive earned release credits or a restricted release felony. All other felonies can earn release credits of up to either fifty percent or seventy-five percent depending on the seriousness level of the offense.

The proposed bill provides expanded eligibility for treatment-based community corrections centers, authorizes limited options for release of aged inmates, and expands intermediate sanctions for offenders on community supervision.

The proposed bill also amends penalties or conduct provisions for: (1) Manslaughter, § 5-10-104, (2) Negligent Homicide, § 5-10-105, (3) Indecent Exposure, § 5-14-112, (4) Sexual extortion, § 5-14-113, (5) Theft of property, § 5-36-103, (6) Aggravated residential burglary, § 5-39-204, (7) Furnishing, possessing, using, or delivering a prohibited article, § 5-54-119, (8) Promoting prostitution of a minor, § 5-70-104, and (9) Possession of firearms by certain persons, § 5-73-103.

<sup>1</sup> This impact assessment was prepared 3/29/2023 6:15 AM by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Arkansas Department of Corrections and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: "minimal" = less than 10 offenders per year will be affected; "medium" = would require budgetary increases for ADC inmate costs; and "major" = would require budgetary increases for ADC inmate costs and construction costs for additional beds.

<sup>2</sup> Standard punishment ranges:

Class Y 10-40 years or life  
Class A 6-30 years; up to \$15,000  
Class B 5-20 years; up to \$15,000

Class C 3-10 years; up to \$10,000  
Class D 0-6 years; up to \$10,000  
Unclassified As specified in statute

Misdemeanors  
Class A Up to 1 year; up to \$2,500  
Class B Up to 90 days; up to \$1,000  
Class C Up to 30 days; up to \$500



**Impact Information** The proposed bill amends some provisions which, independently considered, would increase the demand on the correctional resources of the state and some which would decrease the demand on the correctional resources of the state. The projected impact of many of these provisions cannot be determined. For this reason, the overall projected impact of the proposed bill cannot be determined. However, assumptions based on the increased minimum serving percentages can be applied to historical data to project the impact from this portion of the bill.

The following projection was prepared with the help of JFA Associates, Denver, CO, using the Wizard Microsimulation Projection Model. This impact assessment is based on data from the prison population projection using ADC data from the calendar year ending December 31, 2021.

The projected impact on the resources of ADC is shown in the following table. The impact represents the increase in the current baseline ADC population over the next ten-year period. Additional budgetary requirements are calculated using \$23,331 as the difference in annual cost of care per inmate. This impact is limited to the effect of the release eligibility provisions in the proposed bill, meaning that the cost listed is that which is above and beyond projected baseline prison population growth. Further, this projected impact does not include any costs associated with building new prison beds.

In order to determine the annual increase in population, an ADC admissions file was created containing those inmates who were admitted to prison in the calendar year ending December 31, 2021. The sentences of those offenders were then analyzed to determine their projected length of stay under current release eligibility laws. The length of stay under existing law was subtracted from the proposed length of stay under the proposed bill to determine the “increased length of stay” under the proposed bill. The projected length of stay under the proposed bill is based on the proposed minimum serving percentage, as well as a reduction due to new offenses committed after expiration of sentence and the difference in sentences observed as minimum release percentages increase under historical legislation. This was applied to the total number of offenders in the admissions file to determine the increase in inmate population. Finally, the time that the selected group would spend in custody on a parole violation was considered and the impact was reduced to offset costs associated with this time. The following table details the results of this analysis.

<b>Year</b>	<b>Annual Increase in Population</b>	<b>Additional Annual Inmate Cost of Care</b>
2024	1	\$ 23,331
2025	66	\$ 1,539,846
2026	188	\$ 4,386,228
2027	350	\$ 8,165,850
2028	553	\$ 12,902,043
2029	852	\$ 19,878,012
2030	1,026	\$ 23,937,606
2031	1,194	\$ 27,857,214
2032	1,327	\$ 30,960,237
2033	1,465	\$ 34,179,915
<b>Total 10- year impact</b>		<b>\$ 163,830,282</b>

# HB 23-1135



Legislative Council Staff  
*Nonpartisan Services for Colorado's Legislature*

## Final Fiscal Note

<b>Drafting Number:</b>	LLS 23-0521	<b>Date:</b>	July 26, 2023
<b>Prime Sponsors:</b>	Rep. Michaelson Jenet; Bird Sen. Zenzinger; Smallwood	<b>Bill Status:</b>	Signed into Law
		<b>Fiscal Analyst:</b>	John Armstrong   303-866-6289 john.armstrong@coleg.gov

**Bill Topic:** PENALTY FOR INDECENT EXPOSURE IN VIEW OF MINORS

<b>Summary of Fiscal Impact:</b>	<input checked="" type="checkbox"/> State Revenue	<input 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 makes indecent exposure a class 6 felony offense if committed in view of a minor. The bill will increase state revenue and expenditures to the Judicial Department on an ongoing basis.

**Appropriation Summary:** For FY 2023-24, the bill requires an appropriation of \$54,797 to the Judicial Department.

**Fiscal Note Status:** The fiscal note reflects the enacted bill.

**Table 1**  
**State Fiscal Impacts Under HB 23-1135**

		Budget Year FY 2023-24	Out Year FY 2024-25
<b>Revenue</b>		-	-
<b>Expenditures</b>	General Fund	\$54,797	\$70,766
	Centrally Appropriated	\$11,974	\$17,412
	<b>Total Expenditures</b>	<b>\$66,771</b>	<b>\$88,178</b>
	<b>Total FTE</b>	<b>0.7 FTE</b>	<b>1.0 FTE</b>
<b>Transfers</b>		-	-
<b>Other Budget Impacts</b>	General Fund Reserve	\$8,220	\$10,615

## Summary of Legislation

Under current law, indecent exposure is a class 1 misdemeanor; but, if the perpetrator has two prior indecent exposure convictions then it is a class 6 felony. The bill makes the perpetrator's first indecent exposure offense a class 6 felony if committed in the view of a minor, provided the person is more than four years older than the child.

## Background and Assumptions

Sentencing requirements for class 6 felony indecent exposure cases require sex offender intensive supervision probation (SOISP). Persons sentenced to probation under a misdemeanor receive non-intensive supervision. SOISP requires between 4 and 10 hours more per month in probation workload hours compared to non-intensive supervision.

## 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. Using Judicial Department data, the following section outlines crimes that are comparable to the offense in this bill and discusses assumptions on future rates of criminal convictions resulting from the bill.

**Prior conviction data.** This bill reclassifies the existing offense of indecent exposure if committed in view of a minor by making the offense from a class 1 misdemeanor to a class 6 felony. From FY 2019-20 to FY 2021-22, 439 have been convicted and sentenced for the misdemeanor offense. Of the persons convicted, 427 were male, 8 were female, and 4 did not have a gender identified. Demographically, 305 were White, 94 were Black/African American, 21 were Hispanic, 6 were Asian, 2 were American Indian, 6 were classified as "other" and 5 did not have a race identified.

**Assumptions.** Based on an examination of victim information in indecent exposure cases, the fiscal note assumes that there will be 11 new class 6 felony cases a year for indecent exposure that are sentenced to probation on SOISP. The fiscal note assumes that sentences to the Department of Corrections will be minimal. Visit [leg.colorado.gov/fiscalnotes](https://leg.colorado.gov/fiscalnotes) for more information about criminal justice costs in fiscal notes.

## State Revenue

**Criminal fines and court fees.** By creating making a misdemeanor offense a 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 6 felony is \$1,000 to \$100,000 and \$500-\$1,000 for a class 1 misdemeanor. 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**

The bill increases state expenditures in the Judicial Department by \$66,771 in FY 2023-24 and \$88,178 in FY 2024-25, paid from the General Fund. Expenditures are shown in Table 2 and detailed below.

**Table 2  
Expenditures Under HB 23-1135**

	FY 2023-24	FY 2024-25
<b>Judicial Department</b>		
Personal Services	\$45,532	\$68,301
Operating Expenses	\$2,065	\$2,065
Capital Outlay Costs	\$7,070	\$400
Centrally Appropriated Costs <sup>1</sup>	\$11,974	\$17,412
<b>Total Cost</b>	<b>\$66,771</b>	<b>\$88,178</b>
<b>Total FTE</b>	<b>0.7 FTE</b>	<b>1.0 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation

**Probation.** The bill will increase the number of individuals sentenced to SOISP. The total number of additional hours of probation supervision is expected to increase by 1,511 hours annually, or 0.7 FTE. This probation officer will be assisted by 0.2 FTE Judicial Support Services and 0.1 Probation Supervisor, resulting in a total of 1.0 FTE. Costs are prorated for the General Fund pay date shift and are prorated by 3 months, assuming this is the time period in which individuals will be sentenced to probation. Standard operating expenses and capital outlay costs are included.

**Department of Corrections.** To the extent that this bill increases the number of persons sentenced to prison for indecent exposure if committed in view of a minor, costs will increase. However, at this time it is assumed that the likelihood of persons being sentenced to the custody of the DOC is minimal and that any increase in costs will be addressed through the annual budget process, if necessary.

**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. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

**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.

**Local Government**

District Attorneys may experience a slight increase in workload for cases that carry the enhanced penalty of a class 6 felony. This additional workload is assumed to be minimal. In addition, workload to the Denver County Court will decrease to the extent cases are prosecuted in district court instead of county court.

**Effective Date**

The bill was signed into law by the Governor and took effect on June 7, 2023.

**State Appropriations**

For FY 2023-24, the bill requires an appropriation of \$54,797 from the General Fund to the Judicial Department, and 0.7 FTE.

**State and Local Government Contacts**

Corrections  
Judicial

District Attorneys

Information Technology

## SENATE BILL 1807

### 625 ILCS 5/11-204 & 625 ILCS 5/11-204.1

#### Sentence Enhancements for Fleeing and Aggravated Fleeing

Total Population Increase: **146 People**

Net Increase Over Three Years: **\$ 9,946,413**

Senate bill 1807 ([SB1807](#)) amends 625 ILCS 5/11-204 by increasing a first or second conviction for fleeing or attempting to elude a peace officer from a Class A misdemeanor to a Class 4 felony. Establishing a first or second-time conviction for fleeing as a felony offense allows for the judge to impose a prison sentence, which is not authorized for a Class A misdemeanor. A third or subsequent conviction for fleeing increases from a Class 4 felony to a Class 3 felony, increasing the allowed sentence range from 1 to 3 years to 2 to 5 years.

SB1807 also amends a first-time conviction for aggravated fleeing or attempting to elude a peace officer (625 ILCS 5/11-204.1) from a Class 4 felony to a Class 3 felony. A second or subsequent offense increases from a Class 3 felony to a Class 2 felony, with a sentence range of 3 to 7 years.

**Policy Question:** Would the longer sentences due to the increased offense classes under SB1807 reduce the number of crimes committed enough to offset the increased costs of incarceration and community supervision?

Based on the available data, the costs of this proposal, had it been in effect for the past three years, outweigh the benefits of the proposed changes.

**Table 1: Changes Proposed by SB1807**

Current Law				SB1807		
Offense	Class	Incarceration	Probation	Class	Incarceration	Probation
Fleeing - 1st or 2nd Offense	A	Less than 1 year	Up to 2 years	4	1-3 years	Up to 2 ½ years
Fleeing - Third or Subsequent	4	1-3 years	Up to 2 ½ years	3	2-5 years	Up to 2 ½ years
Aggravated Fleeing - 1st Offense	4	1-3 years	Up to 2 ½ years	3	2-5 years	Up to 2 ½ years
Aggravated Fleeing - 2nd or Subsequent	3	2-5 years	Up to 2 ½ years	2	3-7 years	Up to 4 years

<sup>a</sup>Misdemeanor convictions can have a jail sentence of less than one year. Felony convictions can have a prison sentence or probation with up to 6 months in jail as a condition of probation.

SPAC used criminal history record information (CHRI) from fiscal years 2020 through 2022 to calculate the number of arrests, convictions, withheld judgements, and jail and probation sentences for Fleeing

and Aggravated Fleeing, provided in Table 2. Most convictions were Class 4 felonies for aggravated fleeing and Class A misdemeanors for fleeing.

**Table 2: Total Arrests, Convictions, Withheld Judgements, and Jail and Probation Sentences**

	<b>Agg Fleeing</b>	<b>Fleeing</b>
Arrests	4,389	517
Convictions	1,395	337
Withheld Judgements	20	84
Jail or Probation Sentences	726	205

SPAC used IDOC data from the same period to identify admissions, exits, and the June 30th, 2022 prison population for offenses amended by SB1807, provided in Table 3.

**Table 3: Total Prison Admissions, Prison Population, and Average Jail Credits, Sentence Length, and Length of Stay**

	<b>Agg Fleeing</b>	<b>Fleeing</b>
Class 3 Admissions	36	0
Class 4 Admissions	458	6
<b>Total Admissions</b>	<b>494</b>	<b>6</b>
Class 3 Population	11	0
Class 4 Population	85	2
<b>Total Population</b>	<b>96</b>	<b>2</b>
Average Jail Credit	0.61	0.57
Average Sentence	1.07	0.90
Average Length of Stay	0.56	0.29

**Cost Analysis**

Table 4 compares the current costs with the proposed costs had SB1807 been in effect for the last three years. This table includes the costs to both local and state governments. Overall, costs would have increased \$9,976,205 under this proposal.

**Table 4: Total Government Cost Changes Over Three Years**

	<b>Current</b>	<b>Proposed</b>	<b>Difference</b>
Agg Fleeing	\$11,616,195	\$19,836,214	\$8,220,018
Fleeing	\$721,728	\$2,477,915	\$1,756,187
<b>Total</b>	<b>\$12,337,923</b>	<b>\$22,314,128</b>	<b>\$9,976,205</b>

Table 5 below provides the costs avoided to victims and the community that would have resulted from SB1807. The proposal would have increased the number of prison sentences and the length of stay in IDOC, leading to increased incapacitation benefits and decreased recidivism. Costs of nearly \$30,000 would have been avoided because of delayed or avoided criminal acts. Victimization costs included tangible costs of \$8,572 and intangible costs of \$9,678.

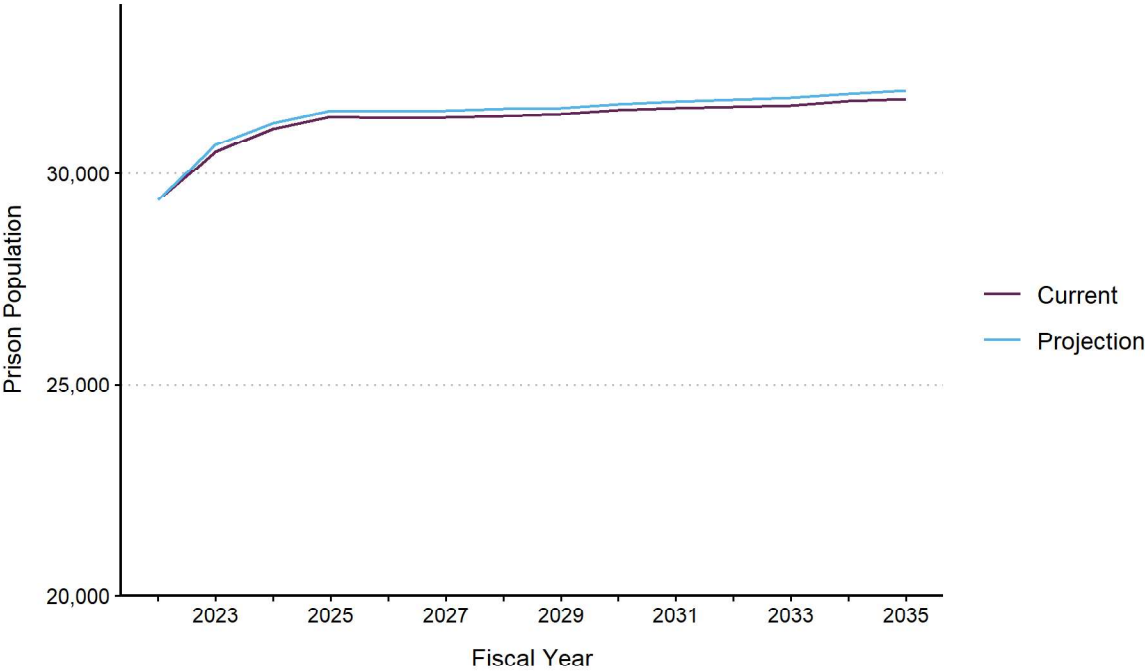
**Table 5: Victimization Changes**

	<b>Benefits</b>
Recidivism	\$18,250
Incapacitation	\$11,542

**Prison Population Projection**

The impact of SB1807 on the prison population shows a gradual increase of about 150 by 2025. The larger population is due to increased IDOC admissions and lengths of stay because of the more severe offense classes.

**Figure 1: SPAC Prison Population Projection SB1807**



In calculating the projection, SPAC assumed that admissions, sentences, and IDOC discretionary sentence credit awards would remain consistent with FY 2022 admissions and recent exits. Future enforcement patterns or subsequent reforms, such as the SAFE-T Act (Public Act 101-0652), may



impact future convictions and sentences, but were not included in the projection as the effects, if any, are unknown.

### Demographics of Admissions and Arrests

Table 6: Demographics of Arrests FY 2020 through FY 2022

Characteristic	Aggravated Fleeing		Fleeing	
	Count	Percent	Count	Percent
<b>Race</b>				
Black	2,320	52.9%	228	44.1%
White	1,731	39.4%	252	48.7%
Hispanic	284	6.5%	24	4.6%
Other	54	1.2%	13	2.5%
<b>Sex</b>				
Male	3,940	89.8%	434	83.9%
Female	449	10.2%	83	16.1%
<b>Region</b>				
Cook	1,085	24.7%	63	12.2%
Collar	649	14.8%	117	22.7%
Urban	1,528	34.8%	220	42.6%
Rural	1,125	25.6%	116	22.5%
<b>Total</b>	<b>4,389</b>	<b>-</b>	<b>516</b>	<b>-</b>

Table 7: Demographics of Admissions to DOC FY 2020 through FY 2022

Characteristic	Aggravated Fleeing		Fleeing	
	Count	Percent	Count	Percent
<b>Race</b>				
Black	275	55.7%	1	16.7%
White	169	34.2%	5	83.3%
Hispanic	45	9.1%	0	0.0%
Other	5	1.0%	0	0.0%
<b>Sex</b>				
Male	472	95.5%	6	100.0%
Female	22	4.5%	0	0.0%
<b>Region</b>				
Cook	190	38.5%	1	16.7%
Collar	53	10.7%	0	0.0%
Urban	109	22.1%	2	33.3%
Rural	142	28.7%	3	50.0%
<b>Total</b>	<b>494</b>	<b>-</b>	<b>6</b>	<b>-</b>

### SPAC Fiscal Impact Analysis Methodology

SPAC looked retroactively at the past three fiscal years, 2020 through 2022, to determine the impact of these policies had they been in effect. The data for arrests, convictions, and probation sentences were from the Criminal History Records Information (CHRI). Information about prison admissions and prison exits, including sentence length and jail credits, were from IDOC's Planning and Research Division. To calculate the cost of the criminal justice system, SPAC used CHRI and IDOC data on (a) the number of convictions for first and subsequent offenses under the applicable statutes, (b) the average lengths of stay in county and DOC facilities, and (c) past spending on prisons and county criminal justice systems.<sup>1</sup> SPAC used only variable cost changes in the incarcerated population and did not estimate costs for staffing changes.

SPAC used CHRI and IDOC data to calculate the number of admissions and the lengths of stay resulting from SB1807. These calculations are explained below:

- The number of convictions over the past three years were held constant, but the classes were increased according to SB1807.
- To calculate how many new admissions to prison there would have been for new Class 4 fleeing and Class 3 aggravated fleeing, SPAC applied the same proportion of prison sentences

<sup>1</sup> Local costs were estimated from SPAC survey of county budgets, available on SPAC's website.

for current Class 4 fleeing and Class 3 aggravated fleeing convictions for the last three fiscal years respectfully.

- The number of admissions for the new Class 3 fleeing and Class 2 aggravated fleeing were calculated using the number convictions, the general proportion of prison sentences for the new class, and the difference in sentencing patterns for current offense and the general sentencing patterns for that class.
- To calculate length of stay for new Class 4 fleeing and Class 3 aggravated fleeing, the length of stay for FY 2022 exits for the current Class 4 fleeing and Class 3 aggravated fleeing offenses were applied.
- The length of stay of the new Class 3 fleeing and Class 2 aggravated fleeing were calculated using the current length of stay for that offense, and adding the difference of the average length of stay between the current class and the proposed class.

### **Impacts of Proposed Legislation:**

The following pages describe the impact that SB1807 would have on the different areas of the Illinois criminal justice system. A narrative section describes each impact and how SPAC estimated the dollar value of the impact. A table with complete calculations used to create the estimates can be requested from SPAC.

#### **Cost to State Prisons**

Additional Costs over three years: **\$7,705,374**

The above estimates are the total additional costs to IDOC had these policies been in place from 2020 to 2022. An increased in the number of prison admissions and longer prison sentences due to the higher offense classes proposed in SB1807 would have led to this cost increase.

#### **Impact of Proposed Legislation on State Supervision**

Additional Costs over three years: **\$2,300,072**

SB1807 would have increased both the number of people and the length of time they had to serve on mandatory supervised release due to the higher offense classes.

#### **Impact of Proposed Legislation on County Jails**

Additional Costs over three years: **\$1,367,076**

Additional jail costs would have been realized, because controlling for other factors, longer prison sentences are correlated with longer pretrial detention. SPAC analysis showed a relationship of 29 days longer pretrial detention for each additional year sentence. This estimate is applied to all offenders receiving a longer prison sentence. Because the effect of legislation on prosecution and law enforcement are unknown, we assume that no additional people would be charged and held by jails during judicial processing.

A misdemeanor conviction can have a jail sentence, which was not included in this calculation. There may be jail costs avoided from increasing the minimum class from Class A to Class 4 which could

potentially offset the additional costs. SPAC does not have data on jail length of stay to incorporate these costs avoided.

### **Impact of Proposed Legislation on Local Probation**

Additional Costs over three years: **-\$1,396,317**

SB1807 would have decreased the amount of money that local probation departments spent on probation because the increased likelihood of a prison sentence being imposed for the higher offense classes. More people sentenced to prison rather than probation, would have reduced the number of people that local probation departments supervised.

### **Impact of Proposed Legislation on Victims and Communities**

Additional Benefits over Three Years: **\$29,792**

Increased sentences would have incapacitated offenders for a longer time. SPAC incorporated the incapacitation effect on victims in two ways:

1. The average age at exit would be older because of longer sentences, which would reduce the recidivism rate because recidivism generally declines with age (recidivism benefits). SPAC reviewed historical data to find recidivism rates at each age from 18 through 60 and applied these recidivism rates and trends to the age offenders would have exited, had the bill been in effect.
2. The estimate presented here calculates the benefits due to changes in recidivism for two age groups: those offenders under 26, who have falling recidivism rates with increased age and those offenders older than 26, who exhibit more gradual reductions in recidivism rates. Because these age groups' recidivism rates changed consistently across crime types, felony classes, and gender, SPAC found these methods reasonable for calculating changes in recidivism due to sentencing changes. The [SPAC Victimization Supplement](#) further describes the methodology.
3. Future crimes are delayed because offenders are incapacitated, meaning crimes may occur earlier or later because of the timing of the offenders' release (Incapacitation Benefits). Because a dollar today is worth more than a dollar tomorrow, crime delays create benefits to crime victims. This effect is generally referred to as the social discount rate. SPAC used a 3% discount rate to victimizations under the different incapacitation lengths to estimate a possible benefit of delayed crime.

**Pretrial Jail Cost Calculation**

<b>Flee Type</b>	<b>Jail Cost</b>	<b>Current Sentences</b>	<b>Current LOS</b>	<b>Current Cost</b>	<b>New Sentences</b>	<b>Proposed LOS</b>	<b>Proposed Cost</b>
Agg Fleeing	\$3,817	494	0.61	\$1,145,535	956	0.61	\$2,228,128
Fleeing	\$3,817	6	0.57	\$12,991	137	0.57	\$297,474

**Probation Cost Calculation**

<b>Flee Type</b>	<b>Probation Cost</b>	<b>Current Sentences</b>	<b>Current Sent Length</b>	<b>Current Cost</b>	<b>New Sentences</b>	<b>Proposed Sent Length</b>	<b>Proposed Cost</b>
Agg Fleeing	\$4,403	619	1.98	\$5,400,420	382	2.08	\$3,504,149
Fleeing	\$4,403	89	1.70	\$665,922	137	1.93	\$1,165,876

**DOC Cost Calculation**

<b>Flee Type</b>	<b>Prison Cost</b>	<b>Current Sentences</b>	<b>Current LOS</b>	<b>Current Cost</b>	<b>New Sentences</b>	<b>Proposed LOS</b>	<b>Proposed Cost</b>
Agg Fleeing	\$11,225	494	0.56	\$3,094,059	956	0.96	\$10,332,712
Fleeing	\$11,225	6	0.29	\$19,841	137	0.32	\$486,562

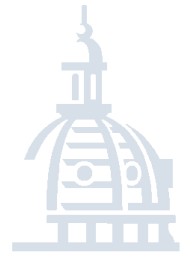
**Mandatory Supervised Release (MSR) Cost Calculation**

<b>Flee Type</b>	<b>MSR Cost</b>	<b>Current Sentences</b>	<b>Current LOS</b>	<b>Current Cost</b>	<b>New Sentences</b>	<b>Proposed LOS</b>	<b>Proposed Cost</b>
Agg Fleeing	\$3,754	494	1.07	\$1,976,181	956	1.05	\$3,771,224
Fleeing	\$3,754	6	1.02	\$22,974	137	1.03	\$528,003

**Cost Changes**

<b>Cost Center</b>	<b>Aggravated Fleeing</b>			<b>Fleeing</b>		
	<b>Current Cost</b>	<b>Proposed Cost</b>	<b>Cost Change</b>	<b>Current Cost</b>	<b>Proposed Cost</b>	<b>Cost Change</b>
Pretrial	\$1,145,535	\$2,228,128	\$1,082,593	\$12,991	\$297,474	\$284,483
Probation	\$5,400,420	\$3,504,149	-\$1,896,271	\$665,922	\$1,165,876	\$499,954
Prison	\$3,094,059	\$10,332,712	\$7,238,653	\$19,841	\$486,562	\$466,721
MSR	\$1,976,181	\$3,771,224	\$1,795,044	\$22,974	\$528,003	\$505,028

Note: Slight discrepancies may occur in replicating calculations of current and proposed cost columns due to rounding of decimal places in sentencing and length of stay (LOS). Jail, probation, DOC, and MSR costs are marginal costs per year.



# Fiscal Note

## Fiscal Services Division

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[HF 358](#) – Eluding Law Enforcement, Penalties (LSB1401HV.1)  
 Staff Contact: Justus Thompson (515.725.2249) [justus.thompson@legis.iowa.gov](mailto:justus.thompson@legis.iowa.gov)  
 Fiscal Note Version – Final Action

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### **Description**

[House File 358](#) relates to the criminal offense of eluding or attempting to elude a pursuing law enforcement vehicle. The Bill enhances or amends the following penalties under Iowa Code section [321.279](#):

- Provides that a person who commits a second or subsequent eluding violation under Iowa Code section 321.279(1) is subject to an enhanced penalty regardless of the subsection of Iowa Code section 321.279 under which the person was previously convicted.
- Increases the penalty under Iowa Code section 321.279(2)(a) for the first offense of eluding a law enforcement officer while exceeding the speed limit by 25 miles per hour from an aggravated misdemeanor to a Class D felony.
- Increases the penalty under Iowa Code section 321.279(2)(b) for a second or subsequent violation of eluding a law enforcement officer while exceeding the speed limit by 25 miles per hour from a Class D felony to a Class C felony. The enhanced penalty applies regardless of the subsection of Iowa Code section 321.279 under which the person was previously convicted.
- The Bill strikes Iowa Code section 321.279(3) and makes corresponding changes.
- The Bill authorizes persons convicted of eluding to be issued a temporary restricted license.
- The Bill changes peace officer jurisdiction and grants peace officers the authority to make an arrest anywhere in the State.

### **Background**

Under current law, a driver of a motor vehicle commits a serious misdemeanor under Iowa Code section 321.279(1) by willfully failing to bring a motor vehicle to a stop or otherwise eluding or attempting to elude a law enforcement vehicle. A driver of a motor vehicle who commits a second or subsequent eluding violation under Iowa Code section 321.279(1) is subject to an enhanced penalty and, upon conviction, guilty of an aggravated misdemeanor if the second or subsequent violation is found under the same Iowa Code subsection as the prior violation.

Under Iowa Code section 321.279(2)(a), a driver of a motor vehicle commits an aggravated misdemeanor by willfully failing to bring a motor vehicle to a stop or otherwise eluding or attempting to elude a marked or unmarked official law enforcement vehicle and in doing so exceeds the speed limit by 25 miles per hour or more. The driver of a motor vehicle who commits a violation under this subsection and who has previously committed a violation under this subsection or Iowa Code section 321.279(3) is, upon conviction, guilty of a Class D felony.

Under Iowa Code section 321.279(3), a driver of a motor vehicle commits a Class D felony if the driver eludes or attempts to elude a marked or unmarked official law enforcement vehicle and exceeds the speed limit by 25 miles per hour or more, and if any of the following occurs:

- The driver is participating in a public offense, as defined in Iowa Code section [702.13](#), that is a felony.

- The driver is operating a motor vehicle while under the influence of alcohol or a drug or while having a blood alcohol concentration of .08 or more (OWI).
- The driver violates Iowa Code section [124.401](#) (manufacture, delivery, or possession of a counterfeit substance, simulated controlled substance, or imitation controlled substance).
- The offense results in bodily injury to a person other than the driver.

The driver of a motor vehicle who commits a second or subsequent violation under Iowa Code section 321.279(3) is, upon conviction, guilty of a Class C felony.

Under current law, persons convicted of eluding are not eligible to be issued a temporary restricted license.

In FY 2022, there were no individuals ordered to prison under Iowa Code section 321.279(2)(a) and two individuals admitted to prison under Iowa Code section 321.279(2)(b). In FY 2022, there were no individuals admitted to Community-Based Corrections (CBC) under Iowa Code section 321.279(2)(a) and five individuals admitted to CBC under Iowa Code section 321.279(2)(b).

A serious misdemeanor is punishable by confinement for up to one year and a fine of at least \$430 but not more than \$2,560. An aggravated misdemeanor is punishable by confinement for up to two years and a fine of at least \$855 but not more than \$8,540. A Class D felony is punishable by confinement for up to five years and a fine of at least \$1,025 but not more than \$10,245. A Class C felony is punishable by confinement for up to 10 years and a fine of at least \$1,370 but not more than \$13,660.

### **Assumptions**

- The following will not change over the projection period: charge, conviction, and sentencing patterns and trends; prisoner length of stay (LOS); revocation rates; plea bargaining; and other criminal justice system policies and procedures.
- A lag effect of six months is assumed from the effective date of this Bill to the date of first entry of affected offenders into the correctional system.
- Marginal costs for county jails cannot be estimated due to a lack of data. For purposes of this analysis, the marginal cost for county jails is assumed to be \$50 per day.
- The marginal cost per day in prison is \$23.42. The marginal cost per day on probation and parole is \$7.27.

### **Correctional Impact**

The correctional impact cannot be determined in regard to the number of additional convictions as it is unknown how many new convictions would result under the Bill. However, HF 358 is estimated to increase the average LOS of individuals admitted to prison and CBC.

**Figure 1 — Change in LOS Under HF 358**

Supervision Status	Annual Admissions	LOS (Months)
<b>Current Penalties</b>		
Prison	2	13.9
CBC	5	24.5
<b>Penalties Under HF 358</b>		
Prison	2	20.9
CBC	5	30.8

**Figure 2** shows estimates for sentencing to State prison, parole, probation, or CBC residential facilities; LOS under those supervisions; and supervision marginal costs per day for all convictions of Class C felonies, Class D felonies, aggravated misdemeanors, and serious misdemeanors. Marginal county jail costs are estimated to be \$50 per day. Refer to the Legislative Services Agency (LSA) memo addressed to the General Assembly, [Cost Estimates Used for Correctional Impact Statements](#), dated January 20, 2023, for information related to the correctional system.

**Figure 2 — Sentencing Estimates and LOS**

Conviction Offense Class	Percent Ordered to State Prison	FY 22 Avg LOS in Prison in Months (All Releases)	FY 22 Marginal Cost Per Day Prison	Percent Ordered to Probation	FY 22 Avg LOS on Probation in Months	FY 22 Avg Cost Per Day Probation	Percent Sentenced to CBC Residential Facility	FY 22 Marginal Cost Per Day CBC	Percent Ordered to County Jail	Marginal Cost Per Day Jail	FY 22 Avg LOS on Parole in Months	FY 22 Marginal Cost Per Day Parole
B Felony Persons	95.2%	115.8	\$23.42	4.8%	38.3	\$7.27	0.0%	\$20.67	45.2%	\$50.00	33.1	\$7.27
C Felony Persons	89.8%	50.1	\$23.42	27.6%	39.0	\$7.27	3.6%	\$20.67	43.2%	\$50.00	19.5	\$7.27
Agg Misd Persons	45.5%	9.7	\$23.42	64.9%	--	\$7.27	3.8%	\$20.67	55.6%	\$50.00	7.0	\$7.27
Serious Misd	1.9%	5.5	\$23.42	51.2%	13.7	\$7.27	0.9%	\$20.67	73.3%	\$50.00	0.5	\$7.27

### **Minority Impact**

The minority impact cannot be determined. However, House File 358 may disproportionately impact African American individuals if trends remain constant. For all eluding convictions, 70.2% are Caucasian, 22.8% are African American, and 7.0% are other races. Iowa's population is 84.5% Caucasian, 3.6% African American, and 11.9% other races. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 20, 2023, for information related to minorities in the criminal justice system.

### **Fiscal Impact**

House File 358 is estimated to increase the average LOS of individuals admitted to prison and CBC. In FY 2022, there were 1,171 convictions for any first-time eluding offense and 101 convictions for any second or subsequent eluding offenses under Iowa Code section 321.279. Enhancement of these penalties is estimated to increase costs to the Department of Corrections (DOC) by \$17,000 annually. **Figure 3** represents the cost for only one year's group of admissions, but the increased cost would recur for each year's group of admissions.

**Figure 3 — Change in Cost Under HF 358**

Supervision Status and Offense Class	Annual Admissions	Cost Per Day	LOS (Days)	Total Cost
<b>Current Penalties</b>				
Prison (Class D Felony)	2	\$23.42	422.8	\$ 19,804
CBC (Class D Felony)	5	\$7.27	745.2	\$ 27,088
				\$ 46,892
<b>Penalties Under HF 358</b>				
Prison (Class C Felony)	2	\$23.42	635.7	\$ 29,776
CBC (Class C Felony)	5	\$7.27	936.83	\$ 34,054
				\$ 63,830



**Figure 4** shows the average State cost per offense for a Class C felony, a Class D felony, an aggravated misdemeanor, and a serious misdemeanor. The estimated impact to the State General Fund includes operating costs incurred by the Judicial Branch, the Indigent Defense Fund, and the DOC. The cost would be incurred across multiple fiscal years for prison and parole supervision.

<b>Figure 4 — Average State Cost Per Offense</b>		
Classification of Offense	Minimum	Maximum
Class C Felony	\$12,100	\$25,100
Class D Felony	\$9,500	\$17,400
Aggravated Misdemeanor	\$5,000	\$9,600
Serious Misdemeanor	\$400	\$5,600

**Sources**

Criminal and Juvenile Justice Planning Division, Department of Human Rights  
Department of Corrections  
Department of Public Safety

/s/ Jennifer Acton

May 16, 2023

Doc ID 1374160

The fiscal note for this Bill was prepared pursuant to [Joint Rule 17](#) and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.

Division of the Budget  
Landon State Office Building  
900 SW Jackson Street, Room 504  
Topeka, KS 66612



Phone: (785) 296-2436  
adam.c.proffitt@ks.gov  
<http://budget.kansas.gov>

Adam Proffitt, Director

Laura Kelly, Governor

February 20, 2023

The Honorable Kellie Warren, Chairperson  
Senate Committee on Judiciary  
300 SW 10th Avenue, Room 346-S  
Topeka, Kansas 66612

Dear Senator Warren:

**SUBJECT:** Fiscal Note for SB 183 by Senator Haley

In accordance with KSA 75-3715a, the following fiscal note concerning SB 183 is respectfully submitted to your committee.

SB 183 would amend the definition of “criminal discharge of a firearm” to include the discharge of a firearm at a motor vehicle, regardless of whether the person discharging the firearm knows or has reason to know that there is a human being present. If bodily harm to a person results from the discharge of a firearm, the crime would be classified as a severity level 5, person felony. If a person was present in a dwelling, building, structure, or motor vehicle at which the offender discharged a firearm, the penalty would be presumptive imprisonment, and in addition to the sentence imposed under sentencing guidelines, an offender must be sentenced to an additional 60 months of imprisonment. If a person less than 14 years of age was present in a dwelling, building, structure, or motor vehicle, an additional 120 months of imprisonment would be added to any sentence imposed under sentencing guidelines. The bill would require additional sentences to run consecutively to any other term of imprisonment imposed and would not be considered a departure from the sentencing guidelines and would not be subject to appeal.

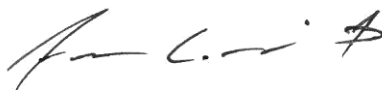
The Kansas Sentencing Commission estimates that enactment of SB 183 would result in an increase of eight adult prison beds needed by the end of FY 2024. By the end of FY 2033, 128 additional beds would be needed. The current estimated available bed capacity is 9,428 for males and 936 for females. Based upon the Commission’s most recent ten-year projection contained in its *FY 2023 Adult Inmate Prison Population Projections* report, it is estimated that the year-end population will total 7,933 male and 764 female inmates in FY 2023 and 8,043 male and 740 female inmates in FY 2024.

The Honorable Kellie Warren, Chairperson  
Page 2—SB 183

The Department of Corrections states that enactment of the bill would have a negligible impact on current operations that could be absorbed within existing resources. The Department notes that marginal costs such as food, clothing, and supplies for each resident total \$9.52 per day per resident.

The Office of Judicial Administration indicates enactment of the bill would have a negligible fiscal effect on the Judicial Branch that could be absorbed within existing resources. Any fiscal effect associated with SB 183 is not reflected in *The FY 2024 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt", with a stylized flourish at the end.

Adam Proffitt  
Director of the Budget

cc: Vicki Jacobsen, Judiciary  
Randy Bowman, Department of Corrections  
Scott Schultz, Sentencing Commission

## CORRECTIONS IMPACT STATEMENT

SESSION: 22RS BILL # HB 215 HCS 1 BR # 278 DOC ID #: xxxx

**BILL SPONSOR(S):** Rep. C. Fugate, J. Blanton, L. Bechler, D. Bentley, K. Bratcher, R. Bridges, J. Decker, R. Dotson, D. Frazier Gordon, C. Freeland, D. Hale, R. Heath, R. Huff, D. Lewis, C. Massey, B. Reed, S. Riley, B. Rowland, S. Sheldon, N. Tate, W. Thomas, K. Timoney, T. Truett, K. Upchurch, B. Wesley, S. Westrom  
**AMENDMENT SPONSOR(S):** . . .

**TITLE:** AN ACT relating to crimes and punishments.

**SUMMARY OF LEGISLATION:** Amend KRS 218A.1410, 218A.1412, and 218A.142 to enhance the penalty for importing or trafficking carfentanil, fentanyl, or fentanyl derivatives from a minimum of 50 percent of the sentence served to a minimum of 85 percent of the sentence served and establish prohibition against the use of pretrial diversion for those criminal offenses.

**AMENDMENT:** Retain original provisions; amend KRS 218A.1412 to establish trafficking in one gram or more of fentanyl, carfentanil, or fentanyl derivatives as a Class C felony; establish the name of the Act as Dalton's Law.

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This  bill  amendment  committee substitute is expected to:

- Have the following Corrections impact  Have no Corrections impact
- |   |  |
|---|--|
| <input type="checkbox"/> Creates new crime(s)                               | <input type="checkbox"/> Repeals existing crime(s)               |
| <input checked="" type="checkbox"/> Increases penalty for existing crime(s) | <input type="checkbox"/> Decreases penalty for existing crime(s) |
| <input type="checkbox"/> Increases incarceration                            | <input type="checkbox"/> Decreases incarceration                 |
| <input type="checkbox"/> Reduces inmate/offender services                   | <input type="checkbox"/> Increases inmate/offender services      |
| <input type="checkbox"/> Increases staff time or positions                  | <input type="checkbox"/> Reduces staff time or positions         |
| <input type="checkbox"/> Changes elements of offense for existing crime(s)  |  |
| <input type="checkbox"/> Otherwise impacts incarceration (Explain) .        |  |
- 

**STATE IMPACT:** Class A, B, & C felonies are based on an average daily prison rate of \$97.60. Community Custody Class C and most Class D felons are housed in one of seventy-four (74) full service or regional jails for up to five (5) years. Department of Corrections' cost to incarcerate a felony inmate in a jail is \$35.43 per day, which includes \$31.34 per diem, medical costs, & central office administrative costs (substance abuse treatment not included).\*

**Projected Impact:**  NONE  MINIMAL to MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

The legislation modifies criminal penalties for trafficking carfentanil, fentanyl, or fentanyl derivatives.

The legislation separates the offenses for importing heroin and importing carfentanil, fentanyl, or fentanyl derivatives in KRS 218A.1410. Under current statute, this Class C felony is prohibited from early release until service of at least fifty percent (50%) of the sentence. The legislation expands this to service of eighty-five percent (85%) of the sentence prior to parole eligibility. Additionally, a prohibition for pretrial diversion is clarified.

KRS 218A.1412 also separates trafficking of heroin from trafficking of carfentanil, fentanyl, or fentanyl derivatives. A conviction of Class C or higher for trafficking in carfentanil, fentanyl, or fentanyl derivatives shall be moved from fifty percent (50%) parole eligibility to eighty-five percent (85%) parole eligibility. A prohibition for pretrial diversion is included.

Under KRS 218A.142 the same eighty-five percent (85%) eligibility is applied to Class B aggravated trafficking of carfentanil, fentanyl, or fentanyl derivatives. Aggravated trafficking of heroin remains at fifty percent (50%) parole eligibility. Aggravated trafficking is twenty-eight (28) grams or more of fentanyl or ten (10) grams or more of carfentanil or fentanyl derivatives.

Inmates subject to the 85% parole eligibility under this legislation will be subject to housing at a prison facility at a cost of \$97.60 per day.

The Department of Corrections currently has thirty-five (35) inmates serving on KRS 218A.1410 Importing Heroin. Offenses specific to fentanyl cannot currently be identified for this offense.

Under Trafficking in a Controlled Substances, KRS 218A.1412, for those for which the controlled substance is specified, the Department is able to identify 209 individuals for trafficking in carfentanil, fentanyl, or fentanyl derivatives.

These individuals have an average sentence length of 3,268 days and are currently subject to fifty percent (50%) parole eligibility. They would serve an additional 1,144 days to reach eighty-five percent (85%) parole eligibility. The additional number of days would translate into an additional cost of \$111,634.88 for each inmate. *(note: inmates may not be paroled at time of parole eligibility.)*

Of 479 inmates with convictions for KRS 218A.142 Aggravated Trafficking, five (5) inmates are incarcerated specifically for Aggravated Trafficking of Fentanyl or Carfentanil.

Aggravating Trafficking for Fentanyl//Carfentanil inmates have an average sentence length of sixteen point six years (16.6) years (6,068 days). This correlates to an average number of 3,034 days of incarceration at fifty percent (50%) parole eligibility, and an increase to 5,158 days to reach eighty-five percent (85%) parole eligibility. The additional number of days would translate into an additional cost of \$207,282.88 for each inmate. *(note: inmates may not be paroled at time of parole eligibility.)*

AOC reports eight (8) convictions in FY21 under 218A.1412 Aggravated Trafficking of Carfentanil, Fentanyl, or Fentanyl derivatives.

The increased incarceration days under the legislation would be a significant increase in cost for offenders convicted for importing, trafficking, or aggravated trafficking of carfentanil, fentanyl, or fentanyl derivatives.

**Cost to Incarcerate**

A Class C Felony sentence is 5 to 10 years.	10 Class C Felons cost KY \$1,781,195.88 to \$3,562,391.76
1 Class C Felon costs KY \$178,119.59 to \$356,239.18	100 Class C Felons cost KY \$17,811,958.80 to \$35,623,917.60
A Class B Felony sentence is 10 to 20 years.	10 Class B Felons cost KY \$3,562,391.76 to \$7,124,783.52
1 Class B Felon costs KY \$356,239.18 to \$712,478.35	100 Class B Felons cost KY \$35,623,917.60 to \$71,247,835.20

**LOCAL IMPACT:** Local governments are responsible for the cost of incarcerating individuals charged with Class A or B misdemeanors and felony defendants until disposition of the case. The estimated impact will be based on the \$35.43 cost to incarcerate for the Department of Corrections, including \$31.34 per diem and medical that DOC pays jails to house felony offenders. This cost to incarcerate may not be the actual housing cost for the jail.\*

**Projected Impact:**  NONE  MINIMAL to MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

With the increased parole eligibility date proposed in the legislation, offenders convicted of importing or trafficking carfentanil, fentanyl, or fentanyl derivatives would not be eligible for community custody until they are within forty-eight (48) months of their parole eligibility date, resulting in fewer inmates eligible for housing at the local detention center.

**PROJECTED IMPACT FROM AMENDMENTS:**

NONE  MINIMAL to MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

House Committee Substitute:

The Committee Substitute reduces the impact to incarceration by reducing the number of offenders who would receive the Class C felony and the associated increase from fifty percent (50%) to eighty-five percent (85%) parole eligibility.

The Committee Substitute modifies KRS 218A.1412 by adding the trafficking amount of one (1) gram of more of fentanyl, carfentanil, or fentanyl derivatives. This removes the applied penalty for any amount of fentanyl, carfentanil, or derivatives, therefore making:

- an amount less than one (1) gram a Class D felony for a 1<sup>st</sup> Offense and a Class C felony for a 2<sup>nd</sup> Offense, and
- an amount of one (1) gram or more a Class C felony for a 1<sup>st</sup> Offense and a Class B felony for a 2<sup>nd</sup> Offense.

Per the legislation, those with the Class C felony level or higher would not be eligible for community supervision or early release until service of eighty-five percent (85%) of the sentence, an increase from the current statute requirement of fifty percent (50%).

Of those current inmates identified as trafficking in carfentanil, fentanyl, or fentanyl derivatives, 180 are serving for a 1<sup>st</sup> Offense and twenty-nine (29) are serving for a 2<sup>nd</sup> Offense.

As current statute applies to any quantity of fentanyl, carfentanil, or derivatives, this offense is not always distinguished by amounts. It is therefore unknown how many convictions may fall into an amount of one (1) gram or more.

The proposed modifications to KRS 218A.1410 Importing and KRS 218A.142 Aggravated Trafficking remain in the same in the Committee Substitute.

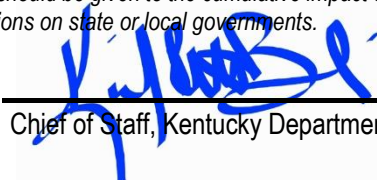
*\*All projections are based on the daily rate x 365 days x number of years. The cost to incarcerate as calculated by the Department is shown here as rounded to the hundredths. Offenders may have multiple offenses or be incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers will include inchoate offenses at the underlying offense level.*

**The following offices contributed to this Corrections Impact Statement:**

Dept. of Corrections  Dept. of Kentucky State Police  Administrative Office of the Courts  Parole Board  Other

NOTE: Consideration should be given to the cumulative impact of all bills that increase the felon population, lengthens the term or incarceration, or impose new obligations on state or local governments.

APPROVED BY:



Chief of Staff, Kentucky Department of Corrections

3/8/2022

Date

SB 74

**Department of Legislative Services**  
Maryland General Assembly  
2023 Session

**FISCAL AND POLICY NOTE**  
**Third Reader**

Senate Bill 74

(Senator Bailey)

Judicial Proceedings

Judiciary

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**Grossly Negligent or Drunk or Drugged Operation of Vehicle or Vessel - Prior Convictions**

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This bill establishes that a conviction for specified drunk and drugged driving offenses constitutes a prior conviction for purposes of determining subsequent offender penalties for a person unlawfully operating or attempting to operate a vessel while under the influence of alcohol, impaired by alcohol and/or drugs, or impaired by a controlled dangerous substance (CDS). Vice versa, a conviction for unlawfully operating or attempting to operate a vessel while under the influence of alcohol, impaired by alcohol and/or drugs, or impaired by a CDS constitutes a prior conviction for purposes of determining increased subsequent offender penalties for specified drunk and drugged driving offenses. The bill also establishes that a person convicted of specified drunk and drugged driving offenses is subject to increased subsequent offender penalties if the person has previously been convicted of manslaughter by vehicle or vessel (gross negligence).

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**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund revenues and expenditures, as discussed below.

**Local Effect:** Potential minimal increase in revenues and potential minimal decrease in local incarceration expenditures, as discussed below.

**Small Business Effect:** None.

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## Analysis

### Bill Summary/Current Law:

#### *Operating a Vessel While Under the Influence or Impaired*

Under the State Boat Act, a person may not operate or attempt to operate a vessel while (1) under the influence of alcohol; (2) impaired by alcohol; (3) so far impaired by any drug, combination of drugs, or combination of one or more drugs and alcohol that the person cannot operate a vessel safely; or (4) impaired by any CDS, unless the person is entitled to use the CDS under State law.

Any person who operates or attempts to operate a vessel on the waters of the State is deemed to have consented to take a test of blood or breath for alcohol or drug content if the person is detained by a police officer who has reasonable grounds to believe that the person has been operating or attempting to operate a vessel while under the influence of alcohol, while impaired by alcohol and/or drugs, or while impaired by a CDS. Evidentiary presumptions applicable to drunk and drugged driving offenses also apply to the operation of a vessel while under the influence of alcohol or impaired by alcohol and/or drugs.

Operating a vessel while under the influence of alcohol is a misdemeanor punishable by (1) for a first offense, a fine of up to \$1,000 and/or imprisonment for up to one year; (2) for a second offense, a fine of up to \$2,000 and/or imprisonment for up to two years; and (3) for a third or subsequent offense, a fine of up to \$3,000 and/or imprisonment for up to three years. *Under the bill*, a conviction for specified drunk and drugged driving offenses constitutes a prior conviction for purposes of determining subsequent offender penalties. The court may prohibit a person convicted of a violation from operating a vessel on the waters of the State for up to one year if the person refused to take a test or was tested and the result indicated an alcohol concentration of 0.08 or more.

Operating a vessel while impaired by alcohol and/or drugs or while impaired by a CDS is a misdemeanor punishable by (1) for a first offense, a fine of up to \$500 and/or imprisonment for up to two months and (2) for a second or subsequent offense, a fine of up to \$1,000 and/or imprisonment for up to one year. *Under the bill*, a conviction for specified drunk and drugged driving offenses constitutes a prior conviction for purposes of determining subsequent offender penalties.

“Vessel,” as it applies to the State Boat Act, means any description of watercraft, including an ice boat but not including a seaplane, that is used or capable of being used as a means of transportation on water or ice. It includes the motors, spars, sails, and accessories of a vessel. The above provisions apply only to (1) vessels required to be registered with the Department of Natural Resources (DNR); (2) vessels required to have a valid number



awarded in accordance with federal law or a federally approved numbering system in another state; and (3) vessels from a foreign country using the waters of the State. Vessels without any propulsion machinery of any type, such as nonpowered sailboats, canoes, and kayaks, are not required to be registered with DNR.

*Driving Under the Influence of Alcohol or While Impaired by Alcohol, Drugs, or a Controlled Dangerous Substance*

Under the Transportation Article, a person may not drive or attempt to drive any vehicle while (1) under the influence of alcohol or under the influence of alcohol *per se*; (2) impaired by alcohol; (3) impaired by a drug, any combination of drugs, or any combination of drugs and alcohol; or (4) impaired by a CDS. Additionally, a person may not commit any of these offenses while transporting a minor.

A person convicted of one of the above offenses is subject to higher maximum penalties when that person has specified prior convictions. Chapter 20 of 2019 increased maximum penalties for subsequent drunk and drugged driving violations. **Exhibit 1** displays the maximum penalties for alcohol and drug-related driving offenses. *Under the bill*, a conviction for operating a vessel while under the influence of alcohol or while impaired by alcohol and/or drugs constitutes a prior conviction for purposes of determining subsequent offender penalties.

A person convicted of a general drunk or drugged driving violation who has previously been convicted of homicide by motor vehicle or vessel while under the influence of alcohol, under the influence of alcohol *per se*, or impaired by alcohol, drugs, or a CDS is subject to a fine of up to \$10,000 and/or up to 10 years imprisonment, consistent with the maximum penalties that apply to a fourth or subsequent general drunk or drugged driving violation. *Under the bill*, a person who has previously been convicted of manslaughter by vehicle or vessel (gross negligence) is also subject to these increased maximum penalties.

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**Exhibit 1**  
**Current Maximum Penalties for Alcohol and/or Drug-related Driving Offenses**

**Driving Under the Influence of Alcohol, Under the Influence *Per Se*, or  
While Impaired by a CDS**

First Offense	1 year imprisonment and/or fine of \$1,000
Second Offense	2 years imprisonment and/or fine of \$2,000
Third Offense	5 years imprisonment and/or fine of \$5,000
Fourth or Subsequent Offense	10 years imprisonment and/or fine of \$10,000

**Driving Under the Influence of Alcohol, Under the Influence *Per Se*, or  
While Impaired by a CDS While Transporting a Minor**

First Offense	2 years imprisonment and/or fine of \$2,000
Second Offense	3 years imprisonment and/or fine of \$3,000
Third Offense	5 years imprisonment and/or fine of \$5,000
Fourth or Subsequent Offense	10 years imprisonment and/or fine of \$10,000

**Driving While Impaired by Alcohol or While Impaired by a Drug, a Combination of  
Drugs, or a Combination of One or More Drugs and Alcohol**

First Offense	2 months imprisonment and/or fine of \$500
Second Offense	1 year imprisonment and/or fine of \$500
Third Offense	5 years imprisonment and/or fine of \$5,000
Fourth or Subsequent Offense	10 years imprisonment and/or fine of \$10,000

**Driving While Impaired by Alcohol or While Impaired by a Drug, a Combination of  
Drugs, or a Combination of One or More Drugs and Alcohol While  
Transporting a Minor**

First Offense	1 year imprisonment and/or fine of \$1,000
Second Offense	2 years imprisonment and/or fine of \$2,000
Third Offense	5 years imprisonment and/or fine of \$5,000
Fourth or Subsequent Offense	10 years imprisonment and/or fine of \$10,000

CDS: controlled dangerous substance

Notes: All listed offenses are misdemeanors. Additionally, for the offense of driving under the influence of alcohol, under the influence *per se*, or while impaired by a CDS, a repeat conviction or convictions within five years requires a mandatory minimum penalty of imprisonment from 5 to 10 days.

Source: Department of Legislative Services

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### *Subsequent Offenders*

Under Maryland Rule 4-245, a court may not sentence a defendant as a subsequent offender unless the State's Attorney serves notice of the alleged prior conviction on the defendant or defendant's counsel. The notice must be served before the acceptance of a guilty plea or plea of *nolo contendere*, or at least 15 days before trial in circuit court or 5 days before trial in the District Court, whichever is earlier. Before sentencing and after giving the defendant a chance to be heard, the court must determine whether the defendant is a subsequent offender.

**State Revenues:** General fund revenues may increase minimally from cases heard in the District Court if individuals receive increased monetary penalties as a result of the bill.

**State Expenditures:** To the extent that judges impose longer sentences as a result of the bill, general fund expenditures may increase minimally from people shifting from local facilities to State facilities or being committed to State correctional facilities for longer periods of time. The number of individuals subject to more stringent penalties under the bill is expected to be minimal.

According to the Judiciary, during fiscal 2021 and 2022, there were (1) six charges and one guilty disposition (conviction) for operating or attempting to operate a vessel while under the influence of alcohol and (2) eight charges and no guilty dispositions for operating or attempting to operate a vessel while impaired by alcohol and/or drugs, or while impaired by a CDS.

Convictions for manslaughter by vehicle or vessel (gross negligence) are more frequent, but still limited overall in the State. The Maryland State Commission on Criminal Sentencing Policy advises that it received information for 33 individuals sentenced to 35 total counts of manslaughter by vehicle or vessel (gross negligence) in the State's circuit courts during fiscal 2022. Four of these individuals and 4 of these counts were associated with subsequent offenses, as defined under that statute. The District Court has concurrent jurisdiction with the circuit court over manslaughter by vehicle or vessel (gross negligence). Information is not readily available on convictions in the District Court for this offense.

**Local Revenues:** Local revenues may increase minimally if the bill results in higher fines in circuit court cases.

**Local Expenditures:** Local incarceration expenditures may decrease minimally if overall, the bill shifts individuals from local detention facilities to State correctional facilities.

### Additional Information

**Prior Introductions:** Similar legislation has not been introduced within the last three years; however, legislation with similar provisions has been proposed. For example, see SB 914 and HB 967 of 2022 and HB 675 of 2021.

**Designated Cross File:** HB 483 (Delegate Simmons, *et al.*) - Judiciary.

**Information Source(s):** Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Natural Resources; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - January 30, 2023  
rh/aad Third Reader - February 23, 2023

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Analysis by: Ralph W. Kettell

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510



**STATE OF MISSISSIPPI  
DEPARTMENT OF CORRECTIONS**

Rick McCarty  
Deputy Commissioner

Administration & Finance  
(601)359-5605

From: Audrey McAfee, Director  
Management Information Systems

Date: March 2, 2012

Re: Impact of Senate Bill 2140

The following data is in response to your request for the impact of Senate Bill 2140 which removes eligibility for earned time allowance, good time, meritorious earned time, trusty time, or other administrative reductions in time to serve for certain violent offenders.

The following chart looks at admissions for FY 2011 to give an overview of the number of new commitments entering the system and the average length of sentence for each. Because data is fairly consistent, this chart is representative of the number of offenders expected to enter each fiscal year by crime:

<b>Crime</b>	<b>New Commitments</b>	<b>Length of Sentence (In Years)</b>
Aggravated Assault	245	8.2
Aggravated DUI	9	7.1
Armed Carjacking	4	8.25
Armed Robbery	3	23.3
Arson	26	8.1
Burglary of Residence/Occupied Dwelling	433	7.7
Child Abuse	19	7.7
Child Endangerment	2	5.0
Child Neglect	12	6.7
Drive By Shooting	10	9.8
Drug Sale/Manufacture	810	7.8
DUI Death	19	11.5
Homicide	52	Life
Kidnapping	14	8.9
Manslaughter	115	18.1
Robbery	149	8.3
Sex Offenses	346	9.72
Strong Armed Robbery	28	7.3
<b>Total</b>	<b>2,296</b>	

Memo – Impact SB 2140

The data indicates the length of time offenders will serve in the absence of earned time and/or trusty time.

Drilling down further into the impact with regards to removing the ability to be awarded earned time, 15%, as now is allowed by statute, the chart below shows a summary of the admissions for FY 2011 in the violent crime list receiving earned time and the number of days received.

<b>FY 2011 Admissions Receiving Earned Time by Offense</b>	<b>Number Receiving Earned Time</b>	<b>Percent Receiving Earned Time by Crime</b>	<b>Average Days Awarded by Crime</b>
Aggravated Assault	232	94.7%	435
Aggravated DUI	9	100.0%	392
Arson	22	84.6%	428
Burglary Residence	412	95.2%	401
Child Abuse	19	100.0%	575
Child Endangerment	2	100.0%	274
Child Neglect	11	91.7%	345
Drive by Shooting	9	90.0%	546
Drug Sale/Manufacture	775	95.7%	427
DUI Death	19	100.0%	649
Kidnapping	8	57.1%	472
Manslaughter	106	92.2%	896
Robbery	142	95.3%	453
Strong Armed Robbery	25	89.3%	374
<b>Total</b>	<b>1,791</b>		

A chart depicting a similar review for trusty time credits awarded to this same pool of admissions is included below. Calculations for the amount of 30-for-30 trusty time that could be awarded is based on offenders in the pool of FY 2011 admissions who have begun receiving trusty time and the maximum amount they could earn if they were placed into trusty status upon admission.

	<b>Receiving 30/30 Time</b>	<b>Percent Receiving 30-for-30 Trusty Time by Crime</b>	<b>Days Eligible to be Awarded by Crime</b>
Aggravated Assault	203	82.9%	1,246
Aggravated DUI	9	100.0%	1,112
Arson	20	76.9%	1,154
Burglary Residence	366	84.5%	1,122
Child Abuse	18	94.7%	1,618
Child Endangerment	2	100.0%	776
Child Neglect	8	66.7%	1,106
Drug Sale/Manufacture	436	53.8%	1,398
DUI Death	16	84.2%	1,757
Kidnapping	8	57.1%	1,374
Manslaughter	98	85.2%	2,483
Robbery	125	83.9%	1,372
Strong Armed Robbery	22	78.6%	928
<b>Total</b>	<b>1,331</b>		

If the language in Senate Bill 2140 were to become law, offenders with crimes designated as violent would have two options for exiting the system: parole or flat-time. No further reductions in time to serve would be allowed. In view of this, a review of parole outcome for offenders convicted of designated crimes who were eligible for parole from July 1, 2010 to present was considered. Except for a few stragglers, the only crimes eligible for parole included in the violent crimes list was sale or manufacture of drugs. During the time frame aforementioned, the following Parole Board outcomes were noted:

	<b>Eligible</b>	<b>Paroled/ Parole Pending</b>	<b>Denied</b>	<b>Percent Paroled</b>
Drug Sale/Manufacture	1,184	843	341	71.2%

If trends continue, meaning the Parole Board maintains paroles about 800 per year and MDOC receives about 800 per year, the stacking effect for drug sale or manufacture due to the proposed legislation could be offset.

The fiscal impact of the proposed legislation is based on the offenders convicted of violent crimes as outlined in the parole law who are currently able to exit the system through ERS. The chart below shows exits during FY 2011 and the number of days avoided due to the awarding the earned time, 30-for-30 trusty time and other forms of good time credit. Again, in the absence of these credits, offenders would only be able to exit through parole (and all listed below are not parole eligible) or serve day for day.

The summary chart below shows a summary of releases to ERS by crime for FY 2011:

<b>Offense</b>	<b>Number Released to ERS</b>
Aggravated Assault	259
Aggravated DUI	8
Arson	30
Burglary Residence	347
Child Abuse	21
Child Neglect	5
Drive By Shooting	2
Drug Sale/Manufacture	320
DUI Death	9
Kidnapping	15
Manslaughter	83
Robbery	130
Strong Armed Robbery	17



The fiscal impact is shown in the chart below. The average number of days avoided due to actual awards of earned time, 30-for-30 trusty time, meritorious earned time, and/or other administrative awards per crime is included; however, the cost avoidance is calculated has been annualized.

Offense	Number Released to ERS	Average Days Avoided	Annualized	Inmate Days Annualized	Marginal Cost Per Day	Annual Cost Avoidance
Aggravated Assault	259	1,343	365	94,535	6.44	\$ 608,805
Aggravated DUI	8	1,360	365	2,920	6.44	\$ 18,805
Arson	30	1,360	365	10,950	6.44	\$ 70,518
Burglary Residence	347	1,281	365	126,655	6.44	\$ 815,658
Child Abuse	21	1,395	365	7,665	6.44	\$ 49,363
Child Neglect	5	752	365	1,825	6.44	\$ 11,753
Drive By Shooting	2	3,675	365	730	6.44	\$ 4,701
Drug Sale/Manufacture	320	994	365	116,800	6.44	\$ 752,192
DUI Death	9	1,543	365	3,285	6.44	\$ 21,155
Kidnapping	15	1,159	365	5,475	6.44	\$ 35,259
Manslaughter	83	2,869	365	30,295	6.44	\$ 195,100
Robbery	130	1,351	365	47,450	6.44	\$ 305,578
Strong Armed Robbery	17	1,437	365	6,205	6.44	\$ 39,960
<b>Total Annual Cost Avoidance</b>						<b>\$ 2,928,848</b>

Again, because data is fairly consistent over time, the annual cost avoidance during the FY 2011 ERS releases for offenders in the 47-7-3 crimes list is likely to be representative and a predictor of future releases. Based on the data, MDOC could see increases upwards of \$2.9M annually if the proposed legislation were to be enacted.

Please contact me should you require additional information.

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0558H.011  
 Bill No.: HB 340  
 Subject: Department of Corrections; Probation and Parole; Crimes and Punishment  
 Type: Original  
 Date: January 3, 2023

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Bill Summary: This proposal changes the law regarding corrections by ending the possibility of conditional release from incarceration for offenses committed after the effective date of the act.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>				
FUND AFFECTED	FY 2024	FY 2025	FY 2026	Fully Implemented (FY 2030)
General Revenue*	\$0	\$0	\$0	Up to (\$870,603)
<b>Total Estimated Net Effect on General Revenue</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>Up to (\$870,603)</b>

\*Officials from the Department of Corrections (DOC) state the Parole Board will retain authority to grant release in-between what would have been their conditional release date and their maximum discharge date. Therefore, the DOC assumed a potential cost of \$0 to (\$870,603) as the DOC is unable to predict the Parole Boards discretion. \$870,603 represents the cost for the retaining (housing) 89 additional prisoners by DOC from removing their conditional release date.

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>				
FUND AFFECTED	FY 2024	FY 2025	FY 2026	Fully Implemented (FY 2030)
<b>Total Estimated Net Effect on Other State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: () indicate costs or losses.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>				
FUND AFFECTED	FY 2024	FY 2025	FY 2026	Fully Implemented (FY 2030)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>				
FUND AFFECTED	FY 2024	FY 2025	FY 2026	Fully Implemented (FY 2030)
General Revenue	0 FTE	0 FTE	0 FTE	0 or (1) FTE
<b>Total Estimated Net Effect on FTE</b>	<b>0 FTE</b>	<b>0 FTE</b>	<b>0 FTE</b>	<b>0 or (1) FTE</b>

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>				
FUND AFFECTED	FY 2024	FY 2025	FY 2026	Fully Implemented (FY 2030)
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**FISCAL ANALYSIS**

L.R. No. 0558H.011

Bill No. HB 340

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January 3, 2023

ASSUMPTION§558.011 – Conditional release

Officials from the **Department of Corrections (DOC)** state this proposal changes the law regarding corrections by removing the requirement for conditional release of offenders as defined under section 558.011, thus ending the possibility of conditional release from incarceration for offenses committed after the effective date of the act. Upon enactment, offenders in prison would be released either at the discretion of the parole board or upon completion of the term(s) of their sentence(s).

The DOC evaluated first releases of offenders on conditional release and parole release during fiscal years 2018 through 2022. When offenders had multiple sentences associated with their first release, and possibly different release statuses associated with different sentences, for the purpose of this analysis, they were only considered as a conditional release if all release statuses were conditional release. Otherwise, unless the offender was discharged from all sentences upon release or released to probation, they were classified as a parole release.

The sentence with the most serious felony class (and longest sentence length where multiple sentences of the same felony class were involved) was used to determine the potential of additional time that would be spent in prison if offenders were not released on conditional release.

In FY 2022, 446 offenders were released on conditional release. The following table shows the difference in times between condition release dates and maximum discharge dates for those offenders broken down by sentence felony class.

Felony class	Releases	Average Sentence Length (Years)	Average Time Served (Years)	Difference
A	12	14.6	14.5	0.1
B	80	9.7	8.1	1.6
C	137	6.5	5.2	1.3
D	106	4.2	3.1	1.1
E	79	3.5	1.6	1.8
U	32	14.8	13.1	1.7
<b>Total</b>	<b>446</b>	<b>6.8</b>	<b>5.4</b>	<b>1.4</b>

Impact if all offenders served until their maximum discharge date:

DD:LR:OD

L.R. No. 0558H.01I

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Based on this number of conditional releases in FY 2022, with an average sentence length of 6.8 years and average release time of 5.4 years, if all offenders who would have been released on conditional release were instead not released until their maximum discharge date, there could be up to an additional 401 offenders in prison and 401 fewer offenders under supervision in the field by FY 2030.

## Change in prison admissions and probation openings with legislation

	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031	FY2032	FY2033
<b>New Admissions</b>										
Current Law	446	446	446	446	446	446	446	446	446	446
After Legislation	446	446	446	446	446	446	446	446	446	446
<b>Probation</b>										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	0	0	0	0	0	0	0	0	0	0
<b>Change (After Legislation - Current Law)</b>										
Admissions										
Probations										
<b>Cumulative Populations</b>										
Prison						45	401	401	401	401
Parole						-45	-401	-401	-401	-401
Probation										
<b>Impact</b>										
Prison Population						45	401	401	401	401
Field Population						-45	-401	-401	-401	-401
<b>Population Change</b>										

Impact if offenders were released one year prior to maximum discharge date:

If the 446 offenders released on conditional release in FY 2022 were instead released one year prior to their maximum discharge date (i.e., at 5.8 years instead of 5.4 years), there could be up to an additional 89 offenders in prison and 89 fewer offenders under supervision in the field by FY 2030.

## Change in prison admissions and probation openings with legislation

	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031	FY2032	FY2033
<b>New Admissions</b>										
Current Law	446	446	446	446	446	446	446	446	446	446
After Legislation	446	446	446	446	446	446	446	446	446	446
<b>Probation</b>										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	0	0	0	0	0	0	0	0	0	0
<b>Change (After Legislation - Current Law)</b>										
Admissions										
Probations										
<b>Cumulative Populations</b>										
Prison						45	89	89	89	89
Parole						-45	-89	-89	-89	-89
Probation										
<b>Impact</b>										
Prison Population						45	89	89	89	89
Field Population						-45	-89	-89	-89	-89
<b>Population Change</b>										

DD:LR:OD

L.R. No. 0558H.011

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It should be stated the removal of conditional release from law does not require offenders to serve the entirety of their sentence. The Parole Board will retain authority to grant release in-between what would have been their conditional release date to their maximum discharge date. Therefore, the DOC assumes a \$0 to (\$870,603) as the DOC is unable to predict Parole Board discretion. The DOC states the difference in this year's response compared to last year is due to a calculation error in a table in last year's response.

	# to prison	Cost per year	Total Costs for <b>prison</b>	Change in probation & parole officers	Total cost for <b>probation and parole</b>	# to probation & parole	Grand Total - Prison and Probation (includes 2% inflation)
Year 1	0	(\$9,499)	\$0	0	\$0	0	\$0
Year 2	0	(\$9,499)	\$0	0	\$0	0	\$0
Year 3	0	(\$9,499)	\$0	0	\$0	0	\$0
Year 4	0	(\$9,499)	\$0	0	\$0	0	\$0
Year 5	0	(\$9,499)	\$0	0	\$0	0	\$0
Year 6	45	(\$9,499)	(\$471,945)	0	\$0	(45)	(\$471,945)
Year 7	89	(\$9,499)	(\$952,070)	(1)	\$81,467	(89)	(\$870,603)
Year 8	89	(\$9,499)	(\$971,111)	(1)	\$82,344	(89)	(\$888,767)
Year 9	89	(\$9,499)	(\$990,534)	(1)	\$83,228	(89)	(\$907,306)
Year 10	89	(\$9,499)	(\$1,010,344)	(1)	\$84,124	(89)	(\$926,220)

If this impact statement has changed from statements submitted in previous years, it could be due to an increase/decrease in the number of offenders, a change in the cost per day for institutional offenders, and/or an increase in staff salaries.

If the projected impact of legislation is less than 1,500 offenders added to or subtracted from the department's institutional caseload, the marginal cost of incarceration will be utilized. This cost of incarceration is \$26.024 per day or an annual cost of \$9,499 per offender and includes such costs as medical, food, and operational E&E. However, if the projected impact of legislation is 1,500 or more offenders added or removed to the department's institutional caseload, the full cost of incarceration will be used, which includes fixed costs. This cost is \$87.46 per day or an annual cost of \$31,921 per offender and includes personal services, all institutional E&E, medical and mental health, fringe, and miscellaneous expenses. None of these costs include construction to increase institutional capacity.

DOC's cost of probation or parole is determined by the number of P&P Officer II positions that are needed to cover its caseload. The DOC average district caseload across the state is 51 offender cases per officer. An increase/decrease of 51 cases would result in a cost/cost avoidance equal to the salary, fringe, and equipment and expenses of one P&P Officer II. Increases/decreases smaller than 51 offender cases are assumed to be absorbable.

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In instances where the proposed legislation would only affect a specific caseload, such as sex offenders, the DOC will use the average caseload figure for that specific type of offender to calculate cost increases/decreases.

**Oversight** does not have any information contrary to that provided by DOC. Therefore, Oversight will reflect DOC's impact for fiscal note purposes.

Officials from the **Office of the State Courts Administrator** assume the proposal will have no fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this Office.

<u>FISCAL IMPACT</u> <u>– State Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026	Fully Implemented (FY 2030)
<b>GENERAL REVENUE</b>				
<u>Savings – DOC</u> (\$558.011) Change in P&P officers p. 3-6				\$0 to...
Personal service	\$0	\$0	\$0	\$44,318
Fringe benefits	\$0	\$0	\$0	\$33,125
Equipment and expense	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$4,024</u>
<b>Total cost - DOC</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$81,467</u></b>
FTE Change - DOC	0 FTE	0 FTE	0 FTE	0 or (1) FTE
<u>Cost – DOC p. 3-6</u> Increased incarceration costs	\$0	\$0	\$0	Up to (\$952,070)
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>Up to</u></b> <b><u>(\$870,603)</u></b>
Estimated Net FTE Change to the General Revenue Fund	0 FTE	0 FTE	0 FTE	0 or (1) FTE

L.R. No. 0558H.011  
 Bill No. HB 340  
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<u>FISCAL IMPACT</u> – Local Government	FY 2024 (10 Mo.)	FY 2025	FY 2026	Fully Implemented (FY 2030)
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

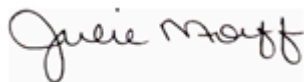
FISCAL DESCRIPTION

This bill prohibits the use of conditional release sentences for offenses that occur on or after August 28, 2023. References to the practice of conditional release are repealed.

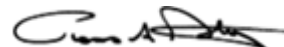
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Corrections  
 Office of the State Courts Administrator



Julie Morff  
 Director  
 January 3, 2023



Ross Strobe  
 Assistant Director  
 January 3, 2023



EXECUTIVE AGENCY  
FISCAL NOTE

AGENCY'S ESTIMATES

Date Prepared: March 23, 2023

Agency Submitting: Department of Corrections

Items of Revenue or Expense, or Both	Fiscal Year 2022-23	Fiscal Year 2023-24	Fiscal Year 2024-25	Effect on Future Biennia
Personell (Expense)		\$331,689	\$458,410	\$916,820
Operating (Expense)		\$1,699	\$1,816	\$3,632
Equipment (Expense)		\$17,178		
Information Technology (Expense)		\$17,484	\$3,001	\$6,002
Total	0	\$368,050	\$463,227	\$926,454

Explanation

(Use Additional Sheets of Attachments, if required)

The Nevada Department of Corrections (NDOC) has reviewed AB 292 (BDR 16-252) and has determined there will be a fiscal impact. Section 4 of the bill states that the warden of each institution and the manager of each facility shall designate an ombudsman to carry out the provisions in section 4 and section 15 of the bill. NDOC recommends 7 Program Officer 1 positions, and associated costs, to be located at each of the 7 major institutions. These positions would also serve at the designated ombudsman at associated conservation camps.

Name Kristina SheaTitle Deputy Director

## GOVERNOR'S OFFICE OF FINANCE COMMENTS

Date Thursday, March 23, 2023

The agency's response appears reasonable.

Name Amy StephensonTitle Director



# NORTH CAROLINA GENERAL ASSEMBLY

## 2023 Session

### Legislative Incarceration Fiscal Note

**Short Title:** Sports Wagering.  
**Bill Number:** House Bill 347 (First Edition)  
**Sponsor(s):** Rep. Saine, Rep. Bell, Rep. Hawkins, and Rep. Clemmons

#### FISCAL IMPACT SUMMARY

Criminal offenses are classified as misdemeanors (Class 3 as the lowest and Class A1 as the highest) and felonies (Class I to Class A). There are three types of legislative changes to offenses that may result in a fiscal impact to the State's criminal justice system: creating a new offense, changing the class of an existing offense, or changing the scope of an existing offense.

Section 1 of the proposed legislation would establish a **new Class G and I felony offense and two new Class 2 misdemeanors**. Each additional person charged under the proposed offense will have a cost to the judicial system and each additional person convicted will have a cost to the correction system. The **cost of one charge and conviction** is listed in the table below, along with the percent of cases that incur those costs at that offense level. **Because the proposed legislation would create new offenses, there is no historic charge or conviction data that would allow Fiscal Research to make projections about its fiscal impact on the criminal justice system.**

Cost of One Charge and Conviction In H.B. 347 v.1											
Offense Class	Prosecution and Defense			Active Sentence					Suspended Sentence		
	Admin. Office of the Courts	Indigent Defense Services		DAC - Confinement			DAC - Post-Release Supervision (PRS)		DAC - Probation		
Felony	Cost	Rate	Cost	Rate	Cost	Length (Mo.)	Cost	Length (Mo.)	Rate	Cost	Length (Mo.)
New G	\$1,525	78%	\$706	39%	\$11,071	15	\$2,282	9	61%	\$6,170	26
New I	\$740	68%	\$407	15%	\$4,428	6	\$2,282	9	85%	\$5,221	22
Misdemeanor	Cost	Rate	Cost	Rate	Cost	Length (Days)			Rate	Cost	Length (Mo.)
New 2	\$178	30%	\$237	Active sentences for misdemeanor convictions are served in County jail.			Misdemeanants do not receive PRS.		78%	\$3,085	13

Note: Court costs reflect the average cost per disposition. Costs for active sentences, probation, and post-release supervision reflect the total cost of the sentence or supervision period. Costs to the Statewide Misdemeanant Confinement Program (SMCP) only occur for active sentences > 90 days and impaired driving.

## FISCAL IMPACT OF H.B.347, V.1

	<u>FY 2023-24</u>	<u>FY 2024-25</u>	<u>FY 2025-26</u>	<u>FY 2026-27</u>	<u>FY 2027-28</u>
General Fund Revenue	-	-	-	-	-
Less Expenditures	-	-	-	-	-
<b>General Fund Impact</b>	<b>No Estimate Available - Refer to Fiscal Analysis section</b>				

## FISCAL ANALYSIS

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### Bill Summary

The proposed legislation would amend 18C of the General Statutes by adding Article 9, Sports Wagering. The new article would establish sports wagering and several new criminal penalties for violations of the article. Specifically, **Section 1 would create the following new charges.**

- **Class 2 misdemeanors** for 1) any person who knowingly offers to engage in sports wagering in any manner that violates the article, 2) any person under the age of 21 who engages in sports wagering as defined by the article.
- **Class G felony** for any person to knowingly attempt to suborn, collude, or otherwise conspire to influence the outcome of any competition or aspect of any competition that is the subject of sports wagering. Currently, it is a Class I felony for a person to bribe a player, manager, coach, etc., for the purpose of influencing the outcome of an athletic contest (G.S. 14-373), or for a player, manager, coach, etc., to accept a bribe for the purpose of influencing the outcome of an athletic contest (G.S. 14-374). However, the Administrative Office of the Courts does not have specific offense codes for these violations, an indication these offenses are infrequently charged or result in convictions.
- **Class I felony** for any applicant of an interactive sports wagering license or a service provider license that willingly furnishes, supplies, or otherwise gives false information on the interactive sports wagering license application.

The **Class G & I felonies and Class 2 misdemeanors** are new offenses and there is **no historic charge or conviction data**. As a result, Fiscal Research is **unable to make projections about the fiscal impact of these new charges on the criminal justice system**. Please refer to the Operating Expenses section below for the average costs of the new charges

### Capital Expenses

Capital costs emerge when prison bed demand exceeds capacity. Based on the most recent prison population and bed capacity projections from the Sentencing and Policy Advisory Commission (SPAC), the State will have sufficient prison beds available beyond the five-year fiscal note horizon. Therefore, Fiscal Research anticipates there will be **no additional prison capital requirements** as a result of this proposed legislation.

### Operating Expenses

The following section explains the source of potential expenses for State agencies because of this proposed legislation. The table in the Fiscal Impact Summary lists the costs specific to the charge or charges included in this proposal.

### Charge: Prosecution and Defense

- Administrative Office of the Courts (AOC): Adding new offenses to the criminal code may increase charges, resulting in corresponding **increases in court time and workload** for judges, clerks, and prosecutors. AOC provides FRD with an average cost based on offense level. Any new charges brought because of this proposed legislation are assumed to carry the following additional average cost to the court system.
  - **Class G felony charges** carry an average cost of \$1,525 per charge.
  - **Class I felony charges** carry an average cost of \$740 per charge.
  - **Class 2 misdemeanor charges** carry an average cost of \$178 per charge.
- Indigent Defense Services (IDS): Persons who cannot afford to hire legal counsel will be provided a public defender (PD), if available, or a private assigned counsel (PAC) attorney paid by IDS. The cost provided is the actual average cost for a PAC attorney and serves as a proxy for the additional workload cost to PD offices.
  - **Class G felony defendants** utilize IDS in 78% of cases at an average cost of \$706 per charge.
  - **Class I felony defendants** utilize IDS in 68% of cases at an average cost of \$407 per charge.
  - **Class 2 misdemeanor defendants** utilize IDS in 30% of cases at a cost of \$237 per charge.

### Conviction: Active Sentence

- Department of Adult Correction – Confinement: Felony convictions that result in an active sentence are served in a State prison. The cost to add one offender to the prison system is \$24.26 per day or \$727.80 per month.
  - **39% of Class G felony convictions serve active sentences** of 15 months with a total cost of \$11,071 per sentence.
  - **15% of Class I felony serve average active sentences** of 6 months with a total cost of \$4,428 per sentence.
  - **Active sentences for misdemeanor** convictions are served in local jails and **only incur costs** to the Statewide Misdemeanant Confinement Program (SMCP) **when the sentence exceeds 90 days, or the conviction is for impaired driving**. The average active sentence for Class 2 misdemeanor convictions is 20 days. Because the new charge in the proposed legislation doesn't meet either criterion, Fiscal Research anticipates convictions of the new charge resulting in active sentences would have no fiscal impact to the State.
- Department of Adult Correction – Community Corrections: All active sentences from Class B1- I felony convictions result in a period of post-release supervision (PRS) of between 9 and 12 months, depending on the severity of the charge. There is a one-time cost of \$146 per PRS hearing. Supervision by a probation officer costs \$237.30 per offender per month.
  - **Class G, and I felons** that served an active sentence would **receive 9 months of PRS** at a cost of \$2,282.



- Because Class 2 misdemeanants do not serve active sentences in prison, they are not subject to PRS.

### **Conviction: Suspended Sentence**

- Department of Adult Correction – Community Corrections: Felony and misdemeanor convictions that receive a suspended sentence result in a period of supervised probation based on the severity of the charge and the offender’s prior record. Supervision by a probation officer costs \$237.30 per offender per month.
  - **61% of Class G felony convictions** result in a suspended sentence with an average length of 26 months at a cost of \$6,170.
  - **85% of Class I felony convictions** result in a suspended sentence with an average length of 22 months at a cost of \$5,221.
  - **78% of Class 2 misdemeanor convictions** receive a suspended sentence with an average length of 13 months at a cost of \$3,085.

### **TECHNICAL CONSIDERATIONS**

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- Offense changes are typically effective on December 1. FRD assumes that costs incurred in the first year to the judicial and correction systems would be less than annualized costs due to lag time in charges and convictions.
- This estimate assumes that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime rates. Likewise, FRD assumes no deterrent effects for any modifications to criminal penalties. The estimates in this Incarceration Note make no assumptions about the larger impact on crime rates or costs to society or the State.
- This estimate makes no prediction regarding the likelihood that a prosecutor will charge an offense based on any proposed increases or decreases to the offense class level. This estimate also does not attempt to predict the impact of offense class changes on plea negotiations. FRD assumes the proposed offense class is charged and convicted at the same rate as the prior level.
- For reference, Appendix A to this document shows the costs per charge/conviction for each class of offense in North Carolina.

### **DATA SOURCES**

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Department of Adult Correction; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

### **LEGISLATIVE FISCAL NOTE – PURPOSE AND LIMITATIONS**

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This document is an official fiscal analysis prepared pursuant to Chapter 120 of the General Statutes and rules adopted by the Senate and House of Representatives. The estimates in this analysis are based on the data, assumptions, and methodology described in the Fiscal Analysis section of this document. This document only addresses sections of the bill that have projected direct fiscal impacts on State or local governments and does not address sections that have no projected fiscal impacts.

**CONTACT INFORMATION**

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Questions on this analysis should be directed to the Fiscal Research Division at (919) 733-4910.

**ESTIMATE PREPARED BY**

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Sean Hamel

**ESTIMATE APPROVED BY**

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Brian Matteson, Director of Fiscal Research  
Fiscal Research Division  
March 21, 2023



**Signed copy located in the NCGA Principal Clerk's Offices**

**APPENDIX A: COSTS PER CHARGE/CONVICTION BY OFFENSE CLASS**

Cost of One Charge and Conviction											
	Prosecution and Defense			Active Sentence					Suspended Sentence		
Offense Class	Admin. Office of the Courts	Indigent Defense Services		DAC - Confinement			DAC - Post-Release Supervision (PRS)		DAC - Probation		
Felony	Cost	Rate	Cost	Rate	Cost	Length (Mo.)	Cost	Length (Mo.)	Rate	Cost	Length (Mo.)
A	\$55,469	95%	\$11,967	100%	NA	Life	N/A	N/A	0%	N/A	0
B1	\$23,852	78%	\$4,187	100%	\$178,610	242	\$2,994	12	0%	N/A	0
B2	\$17,704	85%	\$4,187	100%	\$115,137	156	\$2,994	12	0%	N/A	0
C	\$8,598	82%	\$2,317	100%	\$63,473	86	\$2,994	12	0%	N/A	0
D	\$7,027	89%	\$1,744	100%	\$47,236	64	\$2,994	12	0%	N/A	0
E	\$3,281	79%	\$909	57%	\$19,928	27	\$2,994	12	43%	\$7,356	31
F	\$1,849	74%	\$849	51%	\$13,285	18	\$2,282	9	49%	\$7,119	30
G	\$1,525	78%	\$706	39%	\$11,071	15	\$2,282	9	61%	\$6,170	26
H	\$1,016	78%	\$510	33%	\$8,119	11	\$2,282	9	67%	\$5,933	25
I	\$740	68%	\$407	15%	\$4,428	6	\$2,282	9	85%	\$5,221	22
Misdemeanor	Cost	Rate	Cost	Rate	Cost	Length (Days)			Rate	Cost	Length (Mo.)
A1	\$580	52%	\$281	Active sentences for misdemeanor convictions are served in County jail.			Misdemeanants do not receive PRS		64%	\$3,797	16
1	\$335	62%	\$237						64%	\$3,322	14
2	\$178	30%	\$237						78%	\$3,085	13
3	\$63	14%	\$202						84%	\$3,085	13

*Note: Court costs reflect the average cost per disposition. Costs for active sentences, probation, and post-release supervision reflect the total cost of the sentence or supervision period. Costs to the Statewide Misdemeanant Confinement Program (SMCP) only occur for active sentences > 90 days and for impaired driving.*



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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

**H.B. 111**  
**135<sup>th</sup> General Assembly**

## Fiscal Note & Local Impact Statement

[Click here for H.B. 111's Bill Analysis](#)

**Version:** As Introduced

**Primary Sponsors:** Reps. LaRe and K. Miller

**Local Impact Statement Procedure Required:** No

Jessica Murphy, Budget Analyst

### Highlights

- The bill will result in a relatively small increase in the number of offenders being sentenced to prison for a third degree domestic violence offense, and potentially lengthen the period of incarceration for some offenders. The marginal cost for the Department of Rehabilitation and Correction to add a relatively small number of offenders to its total inmate population is estimated at around \$4,000 per offender per year.
- The bill will affect how certain offenders are sanctioned, but is unlikely to generate any new discernible ongoing costs for county criminal justice systems.

### Detailed Analysis

The bill increases the sentencing range for third degree felony domestic violence and creates a presumption in favor of a prison term for such an offense.

Under current law, domestic violence is charged as a third degree felony when the offender has more than one previous conviction of domestic violence or substantially similar municipal ordinance. Generally, for third degree felonies, the sentencing court may impose either a prison term or community control – there is no presumption for either under current sentencing guidelines. The bill increases the sentencing range for third degree felony domestic violence and creates a presumption in favor of a prison term.

The bill also increases the minimal mandatory prison term for a third degree domestic violence offense that is required (1) when the offender knew the victim was pregnant, and (2) when the offender knew the victim was pregnant and caused serious physical harm to the unborn or caused the termination of the pregnancy.

The table below summarizes the sentencing for third degree domestic violence offense under current law and the bill. As mentioned, the current sentencing range for such an offense,



where the victim is not pregnant, is the general range (“low-tier”) for third degree felonies, and the bill increases that range. This longer sentence range (“high-tier”) already applies to certain third degree felony offenses of aggravated vehicular homicides and assaults, sexual battery, GSI (gross sexual imposition), sex with a minor, and robbery or burglary with two or more separate aggravated or nonaggravated robberies or burglaries.

Third Degree Felony Domestic Violence Sentencing				
Victim Specification	Current Law		Proposed by H.B. 111	
	Sentencing Guidance	Prison Term	Sentencing Guidance	Prison Term
No	Either a prison term <b>or</b> community control	Definite term of 9, 12, 18, 24, 30, or 36 months	Presumption in favor of a prison term	Definite term of 12, 18, 24, 30, 36, 42, 48, 54, or 60 months
Pregnant woman	Mandatory prison term	Either a definite term of 6 months <b>or</b> a definite term of 9, 12, 18, 24, 30, or 36 months	Mandatory prison term	Either a definite term of 12 months <b>or</b> a definite term of 12, 18, 24, 30, 36, 42, 48, 54, or 60 months
Pregnant woman and serious physical harm caused	Mandatory prison term	Either a definite term of one year <b>or</b> a definite term of 9, 12, 18, 24, 30, or 36 months	Mandatory prison term	Either a definite term of 18 months <b>or</b> a definite term of 12, 18, 24, 30, 36, 42, 48, 54, or 60 months

## County criminal justice systems

The bill will not generate any new domestic violence cases for county criminal justice systems to process, but will likely alter the manner in which a relatively small number of offenders convicted of a third degree felony domestic offense are sanctioned each year. There should, however, be no discernible ongoing effect on the annual operating costs of any given county’s criminal justice system.

These cases are a small subset of total domestic violence cases which are generally misdemeanor cases. Based on conversations with the Ohio Prosecuting Attorneys Association, excluding the large urban counties, most county criminal justice systems process fewer than ten of these cases per year. Anecdotal evidence suggests that because the offense involves more than one repeat violation, the sentencing court typically imposes a prison term.

## Ohio Department of Rehabilitation and Correction

According to commitment data from the Department of Rehabilitation and Correction (DRC), between calendar years 2018 and 2022, 220 offenders, on average, were incarcerated

each year for the offense of third degree felony domestic violence. DRC's most recent time-served report for calendar year 2016 indicates that the average time served for this offense was roughly two years (or 24 months, which is in the middle of the range of terms that currently may be imposed).

In the context of a prison system with approximately 43,500 inmates and the 200 or so offenders annually committed to prison for third degree felony domestic violence, the likely increase in the number of commitments as a result of the bill's presumption for prison will be relatively small. It is also possible that some offenders will be sentenced to prison for a longer stay under the increased sentencing ranges than otherwise might have occurred under current law. The marginal cost for DRC to add a relatively small number of offenders to its total inmate population is estimated at around \$4,000 per offender per year. This suggests that any increase in DRC's GRF-funded incarceration costs is likely to be no more than minimal annually.

**FISCAL IMPACT OF PROPOSED LEGISLATION**

**Measure: SB 348 - MRA**

82nd Oregon Legislative Assembly – 2023 Regular Session

Legislative Fiscal Office

*Only Impacts on Original or Engrossed Versions are Considered Official*

Prepared by: Emily Coates  
 Reviewed by: John Terpening, Amanda Beitel, John Borden  
 Date: 4/10/2023

**Measure Description:**

Increases the crime category for a felon in possession of a firearm.

**Government Unit(s) Affected:**

Department of Justice, Cities, Counties, Criminal Justice Commission, Department of Corrections, Department of State Police, District Attorneys, Judicial Department, Oregon Youth Authority, Public Defense Services Commission

**Summary of Fiscal Impact:**

Costs related to the measure may require budgetary action - See analysis.

**Summary of Expenditure Impact:**

	2023-25 Biennium	2025-27 Biennium
<b>Department of Corrections</b>		
<b>General Fund</b>		
Prision Costs	\$210,459	\$3,074,632
Community Corrections	\$(169,000)	\$(1,372,059)
<b>Total Fiscal Impact</b>	<b>\$41,459</b>	<b>\$1,702,573</b>

**Analysis:**

The measure requires the Criminal Justice Commission (CJC) to classify the crime of felon in possession of a firearm as a crime category 8 on the sentencing guidelines grid. Under current law, this crime is classified as a crime category 6.

In addition, the measure amends ORS 166.435 to include the transfer of a firearm to a transferee who is a certified participant of the Address Confidentiality Program as a situation that is not required to abide by specified requirements of the transfer. These provisions apply to firearm transfers occurring on or after the effective date of the measure.

The measure is effective January 1, 2024.

Department of Corrections

The Department of Corrections (DOC) anticipates the fiscal impact of the measure to be \$41,459 General Fund for the 2023-25 biennium and \$1.7 million General Fund for the 2025-27 biennium. Due to the increase in crime seriousness, CJC anticipates the measure will increase the number of individuals now sentenced to a DOC facility and decrease the number of people sentenced to local control and probation. According to data from CJC on convictions of a felon in possession of a firearm from 2022, about 53% of convictions will be sentenced to a DOC facility, with an average sentence length of 28 months, 2% of these convictions will be sentenced to local control with an average sentence of 8.8 months, and 45% of convictions sentenced to probation, with an average sentence length of 36 months. This equates to the average number of people sentenced to a DOC facility increasing from 166 to 251, and for local control and probation reduced from 308 to 223 in a biennium.

DOC assumes a three-month lag between the measures effective date and the date first offenders may be received. The table above provides the estimated decrease in funds that would be distributed to the Community Corrections departments of counties for the costs of probation, post-prison supervision, and local control. The anticipated population increase from this measure would not require increased staffing, so the estimated marginal cost per day is \$24.30 per offender at a DOC facility and \$13.83 per offender on probation.

HB 3194 (2013) requires a 10-year estimate of the fiscal impact for measures with an effect on crimes and sentencing. Using the conviction rate assumptions listed above, DOC anticipates the costs for the 2027-29 biennium to be \$2.5 million General Fund, \$3.9 million General Fund in 2029-31, and \$4.4 million General Fund in 2031-33. The Legislative Fiscal Office notes that these cost estimates could vary depending on the actual number of criminal cases, convictions, and length of sentences issued.

Counties report there is no fiscal impact. As noted above, DOC distributes General Fund to community corrections for a portion of costs associated with probation, post-prison supervision, and local control. However, if the measure becomes law it will result in a decrease of funds distributed to the Community Corrections departments of counties each biennium; \$169,000 in the 2023-25 biennium and \$1.4 million in the 2025-27 biennium.

#### Public Services Defense Commission (PDSC)

The fiscal impact for PDSC is indeterminate. The two-level increase in crime seriousness and the associated presumptive prison sentence may result in increased, pretrial, trial, and possibly appellate-level public defense costs. PDSC is unable to estimate the impact of the measure at this time, but the measure is anticipated to increase costs once actual caseloads are identified.

#### Other Entities

There is a minimal fiscal impact to the Department of Justice, Oregon Judicial Department and Criminal Justice Commission. There is no fiscal impact to Oregon Youth Authority, Oregon State Police, District Attorneys, or cities.

This measure requires a subsequent referral to the Joint Committee on Ways and Means for consideration of its budgetary impact on the State's General Fund.

# SENATE APPROPRIATIONS COMMITTEE

## FISCAL NOTE

**BILL NO.** House Bill 773

**PRINTER NO.** 1022

**AMOUNT**

See Fiscal Impact

**FUND**

General Fund  
 Motor License Fund  
 Local Government Funds

**DATE INTRODUCED**

March 8, 2021

**PRIME SPONSOR**

Representative Quinn

**DESCRIPTION**

House Bill 773 amends Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes to create "Deana's Law," increasing penalties for repeat Driving Under the Influence (DUI) offenders.

This legislation amends section 3803 (relating to grading) as follows:

- An individual who refuses a chemical or breath test or violates section 3802 (c) (DUI with a BAC of 0.16 or higher) or (d) (DUI involving controlled substances) and has the following number of prior offenses commits:
  - 1) A felony of the third degree if the individual has two prior offenses (currently two or more prior offenses); and
  - 2) A felony of the second degree if the individual has three or more prior offenses (currently a felony of the third degree).

The felonies mentioned above are classified as follows:

- A felony of the second degree is punishable by a maximum term of imprisonment of not more than ten years; and
- A felony of the third degree is punishable by a maximum term of imprisonment of not more than seven years.

Section 3804 (relating to penalties) is amended by adding a subsection to provide for consecutive sentencing. § 3804 (c.2) provides that a sentence imposed upon an individual for a DUI offense who has two or more prior offenses shall be served consecutively to any other sentence being imposed by the court, except for those with which the offense must merge as a matter of law.

Additionally, a mandatory suspension of operating privileges for a period of 18 months for a conviction of the felony of the second degree is included to be consistent with the current suspensions for misdemeanors of the first degree and felonies of the third degree.

# SENATE APPROPRIATIONS COMMITTEE

## FISCAL NOTE

This act shall take effect in 120 days.

### **FISCAL IMPACT:**

According to 2019 data from the Pennsylvania Commission on Sentencing (commission) (the last year data is available), there were 379 convictions for the offenses mentioned above that resulted in a term of imprisonment of one year or greater in a state correctional institution.

For violations of 3802(a)(1) (refuse testing), 3802(c) and (d), a 4th offense increases from a felony of the third degree to a felony of the second degree. While the mandatory minimum sentence of imprisonment would not be impacted, the statutory maximum in each case of these cases would increase from 7 years to 10 years of incarceration.

For third or subsequent offenses, there were 2,326 violations reported to the commission in 2018. Approximately 25% (581) of those sentences included a term of imprisonment in a state correctional institution with a minimum sentence greater than one year. The provisions mandating consecutive sentencing would increase prison sentences for many defendants currently awaiting sentencing by the courts, as well as increasing the potential for many consecutive county sentences being increased to the extent that they become state prison sentences.

According to the Pennsylvania Department of Corrections (department), the marginal cost per inmate/per day for less than 300 inmates is approximately \$35.39. Assuming 25% (145) of those same dispositions resulted in an additional consecutive sentence of an additional term of imprisonment for one year, this would result in the department incurring an additional cost of approximately \$1.87 million in the first year.

Under current law, county judges maintain jurisdiction of all DUI cases mandating confinement in county jails or state prisons. To the extent the provisions relating to consecutive sentencing result in a change in the place of confinement from a county jail to state prison, the Commonwealth would realize an additional increase in cost. For every 100 consecutive county sentences that become a state sentence, there would be an additional cost to the department of approximately \$1.29 million.

The mandatory suspension of operating privileges for a period of 18 months for a conviction of the felony of the second degree is technical in nature and would not result in a fiscal impact to the Motor License Fund.



**SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE**  
**STATEMENT OF ESTIMATED FISCAL IMPACT**  
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*This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.*

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<b>Bill Number:</b>	H. 3503	Amended by House Judiciary on January 25, 2023
<b>Author:</b>	Gilliam	
<b>Subject:</b>	Fentanyl Trafficking	
<b>Requestor:</b>	House Judiciary	
<b>RFA Analyst(s):</b>	Gardner	
<b>Impact Date:</b>	January 30, 2023	

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### Fiscal Impact Summary

This bill creates a new offense for trafficking fentanyl and establishes a penalty schedule for violations.

Judicial, the Commission on Prosecution Coordination, and the Commission on Indigent Defense report there will be no expenditure impact from the bill, as existing General Fund appropriations will be used to manage any increase in caseloads.

This bill may result in an increase in the number of inmates housed by the Department of Corrections. However, no data are available to estimate the increase in the number of inmates that may be housed by Corrections. According to Corrections, in FY 2021-22, the annual total cost per inmate was \$32,247, \$30,044 of which was state funded, and the marginal cost per inmate was \$4,836.28, \$4,829.76 of which was state funded. However, as the potential increase in incarcerations is unknown, any expenditure impact for Corrections is undetermined.

As this bill creates a new offense and provides for an enhanced penalty, it may increase General Fund and Other Funds fine revenue; however, data are unavailable to estimate the amount of any additional revenue.

### Explanation of Fiscal Impact

#### **Amended by House Judiciary on January 25, 2023**

#### **State Expenditure**

This bill defines the term fentanyl-related substances and adds the term to the list of Schedule I controlled substances. The bill also creates the felony offense of trafficking in fentanyl and establishes the following penalty structure:

Penalty Structure for Trafficking in Fentanyl		
Amount	First Offense	Second or Subsequent Offense
≥4 grams but <14 grams of fentanyl or fentanyl-related substance or any mixture containing fentanyl or fentanyl-related substance	Imprisonment for not more than 20 years and fine of \$50,000	Imprisonment for not more than 25 years and fine of \$100,000
Amount	Any Level Offense	
≥14 grams but <28 grams of fentanyl or fentanyl-related substance or any mixture containing fentanyl or fentanyl-related substance	Imprisonment for not more than 25 years and fine of \$200,000	
≥28 grams of fentanyl or fentanyl-related substance or any mixture containing fentanyl or fentanyl-related substance	Imprisonment for not more than 30 years and fine of \$200,000	

The bill also establishes that trafficking in fentanyl constitutes a violent crime.

**Judicial.** Since the bill creates a new cause of action, there are no data with which to estimate the number of court filings. However, Judicial intends to use existing General Fund appropriations to manage any increase in caseloads. Therefore, this bill will have no expenditure impact on Judicial.

**Commission on Prosecution Coordination.** This bill creates a new offense, which could result in an increase in the number of warrants that are sent to the Offices of Circuit Solicitor for review, prosecution, and disposition; however, the potential increase in warrants is unknown. The implementation of this bill will have no expenditure impact, as the commission expects to manage any increase in caseloads within current resources.

**Commission on Indigent Defense.** The implementation of this bill will have no expenditure impact, as the department expects to manage any increase in caseloads within current resources.

**Department of Corrections.** This bill may result in an increase in the number of inmates housed by the Department of Corrections. However, no data are available to estimate the increase in the number of inmates that may be housed by Corrections. According to Corrections, in FY 2021-22, the annual total cost per inmate was \$32,247, \$30,044 of which was state funded, and the marginal cost per inmate was \$4,836.28, \$4,829.76 of which was state funded. However, as the potential increase in incarcerations is unknown, any expenditure impact for Corrections is undetermined.

**State Revenue**

This bill has the potential to increase General Fund revenue from fines, as well as Other Funds revenue of Judicial and other applicable agencies who receive a distribution from fine revenue



for such an offense, due to the increased fine for offenders convicted in general sessions courts. However, as the number of such offenses that might occur in a given year is unknown, the revenue impact is undetermined.

**Local Expenditure**

N/A

**Local Revenue**

This bill has the potential to increase local revenue from fines due to the increased fine for offenders convicted in general sessions courts. However, as the number of such offenses that might occur in a given year is unknown, the revenue impact is undetermined.



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Frank A. Rainwater, Executive Director

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**⦿FISCAL⦿⦿NOTE⦿, 88TH LEGISLATIVE REGULAR SESSION**

**April 2, 2023**

**TO:** Honorable Brian Birdwell, Chair, Senate Committee on Border Security

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: SB600** by Birdwell (Relating to increasing the minimum term of imprisonment for certain criminal offenses involving the smuggling of persons.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB600, Committee Report 1st House, Substituted : a negative impact of (\$4,115,037) through the biennium ending August 31, 2025.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five- Year Impact:**

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2024	\$0
2025	(\$4,115,037)
2026	(\$8,142,649)
2027	(\$12,158,956)
2028	(\$16,175,263)

**All Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Savings/(Cost) from</b>
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<i>General Revenue Fund</i>	
<b>1</b>	
2024	\$0
2025	(\$4,115,037)
2026	(\$8,142,649)
2027	(\$12,158,956)
2028	(\$16,175,263)

### **Fiscal Analysis**

The bill would establish a 10 year term of imprisonment for the third degree felony offense of smuggling of persons and would increase the minimum term of imprisonment to 10 years for the second and first degree felony offenses of smuggling of persons and continuous smuggling of persons.

### **Methodology**

The average length of stay for an individual released from community supervision in **fiscal** year 2022 for the offenses of smuggling of persons and continuous smuggling of persons was approximately 3.9 years. Under current law, the minimum period of community supervision for a felony case is the same as the minimum term of imprisonment applicable to the offense; therefore, it is assumed that an increased minimum term for individuals sentenced to community supervision for these offenses would not result in a significant impact on state correctional populations or on the demand for state correctional resources.

Based on the February 2023 *Criminal and Juvenile Justice Uniform Cost Report*, the uniform cost per day for an adult incarcerated in a Texas Department of Criminal Justice systemwide facility was \$77.49. In **fiscal** year 2022, there were 142 individuals admitted into **prison** for these smuggling offenses. The average length of stay for an individual released from **prison** in **fiscal** year 2022 for the offenses of smuggling of persons and continuous smuggling of persons was approximately 1.0 year. The estimated impact on adult correctional populations would follow both the **fiscal** year 2022 observed rate of admission to **prison** and the average time between offense and admission to **prison** for these smuggling offenses. In addition, the length of stay for this estimate is based on the minimum term of imprisonment of ten years outlined in the bill's provisions.

## Local Government Impact

While the *ofiscal* impact to units of local government cannot be determined, it would be contingent on costs associated with enforcement, prosecution, supervision, or confinement related to these smuggling offenses.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** JMc, DDeI, LBO, DGI



