

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 15-0305
Prime Sponsor(s): Sen. Cooke
 Rep. Joshi

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Bill Status: Senate Judiciary
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BILL TOPIC: SECOND DEGREE ASSAULT INJURY TO EMER RESPONDERS

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue Cash Funds	Potential increase. See State Revenue section.	
State Expenditures General Fund	Workload increase.	at least \$924,755
FTE Position Change		
Impact on TABOR Refund		Potential increase.
Appropriation Required: at least \$4,917,169 - Department of Corrections (FY 2015-16 - FY 2019-20)		

* This summary shows changes from current law under the bill for each fiscal year.

Summary of Legislation

This bill raises the classification from assault in the third degree to assault in the second degree for the following criminal actions:

- intentionally causing bodily injury (assault) to an emergency medical care provider in order to prevent that provider from performing a lawful duty; or
- causing a peace officer, firefighter, emergency medical care or service provider, while engaged in his or her professional duties, to come into contact with bodily fluids with the intent to infect, injure, harm, harass, annoy, threaten or cause alarm.

Background

Under current law, intentionally causing bodily injury to an emergency medical **service** provider is second degree assault, whereas the same action against an emergency medical **care** provider is third degree assault. Current law already punishes offenders that use bodily fluids as a form of second degree assault while in a detention facility.

Assault in the third degree is punishable as a class 1 misdemeanor. Assault in the second degree is punishable as either a class 6 (assault in the heat of passion), class 4 (assault in the absence of passionate circumstances), or class 3 felony (assault causing serious bodily injury during the commission of certain serious felonies, such as murder or escape). In many circumstances, assault in the second degree is a crime of violence with a mandatory sentence of at least the midpoint and up to twice the maximum of the presumptive range when the offender uses or possesses and threatens a victim with a deadly weapon or causes serious bodily injury or death to the victim. Table 1, below, shows the change in sentencing under this bill.

Table 1. Current and Proposed Sentencing Ranges for Offenses Covered Under SB15-067		
Crime	Current Sentencing as Third Degree Assault	Proposed Sentencing as Second Degree Assault
Intentionally causing bodily injury (assault) to an emergency medical care provider in order to prevent that provider from performing a lawful duty.	Class 1 misdemeanor, punishable as 6 to 18 months in a county jail, a fine of \$500 to \$5,000, or both.	<p>Class 6 felony, the act must be performed upon a sudden heat of passion, caused by a serious and highly provoking act of the intended victim. The act is a crime of violence, punishable by 1.5 to 3 years in prison, a fine of \$1,000 to \$100,000, or both.</p> <p>Class 4 felony, the act is absent a sudden heat of passion and is punishable as a crime of violence by 4 to 12 years in prison, a fine of \$2,000 to \$500,000, or both.</p> <p>Class 3 felony, the act causes the victim to experience serious bodily injury during the commission or attempted commission of a major felony, such as murder, among others. The act is punishable as a crime of violence with a sentence of 8 to 24 years in prison, a fine of \$3,000 to \$750,000, or both.</p>
Causing a peace officer, firefighter, emergency medical care or service provider, while engaged in his or her professional duties, to come into contact with bodily fluids with the intent to infect, injure, harm, harass, annoy, threaten or cause alarm.	Class 1 misdemeanor, punishable as 6 to 18 months in a county jail, a fine of \$500 to \$5,000, or both.	<p>Class 6 felony, as above, but is not a crime of violence. The act is punishable by 1 to 1.5 years in prison, a fine of \$1,000 to \$100,000, or both.</p> <p>Class 4 felony, as above, but is not a crime of violence. The act is punishable by 2 to 6 years in prison, a fine of \$2,000 to \$500,000, or both.</p> <p>Class 3 felony, as shown above, but is not a crime of violence. The act is punishable by 4 to 12 years in prison, a fine of \$3,000 to \$750,000, or both.</p>

State Revenue

Beginning in FY 2015-16, this bill may increase state revenue credited to the Fines Collection Cash Fund in the Judicial Department. Under current law, as shown in Table 1, assault in the third degree is a class 1 misdemeanor, punishable as 6 to 18 months in a county jail, a fine of \$500 to \$5,000, or both. The fine penalty is \$1,000 to \$100,000 for a class 6 felony; \$2,000 to \$500,000 for a class 4 felony, and \$3,000 to \$750,000 for a class 3 felony. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to state revenue cannot be determined. However, if a greater fine penalty is imposed than under current law, fine penalty will increase. Based on the low number of fines imposed on felonies in 2014, the fiscal note assumes that any revenue generated is likely to be less than \$5,000.

TABOR Impact

This bill may increase state revenue from fines, which will increase the amount required to be refunded under TABOR.

State Expenditures

This bill is expected to increase state expenditures and workload beginning in FY 2015-16 and costs for the Department of Corrections (DOC) beginning in FY 2016-17.

Costs are based on the following assumptions:

- there are at least 66 convictions in state courts and at least 12 convictions in Denver County court of third degree assault that will be reclassified as second degree assault;
- at least 8 offenders per year will be convicted of class 4 felony crimes of violence and sentenced to serve an average of 49.1 months in prison;
- at least 32 offenders per year will be convicted of class 6 felony crimes of violence and sentenced to serve an average of 15.9 months in prison;
- at least 40 offenders per year will be convicted of class 6 felonies for assault with bodily fluids, for which 6 offenders will serve an average of 11.8 months in prison and the remainder will be given alternative sentences; and
- if greater numbers of assaults occur or are sentenced at a higher felony class, the DOC will request additional appropriations through the annual budget process.

Five-Year Fiscal Impact on Correctional Facilities

This bill is anticipated to increase state General Fund expenditures by at least \$4,917,169 between FY 2015-16 and FY 2019-20.

Current law prohibits the General Assembly from passing any bill to increase periods of imprisonment in state correctional facilities without appropriating an amount sufficient to cover the increased capital construction and operating costs of the bill in each of the first five fiscal years. However, current law also allows the DOC to place offenders classified as medium custody and below in private contract prisons, for which no state capital construction costs are incurred.

Offenders sentenced under this bill to DOC may be placed in either a state-run or a private contract prison, depending on several factors. Any offenders that *must* be housed in a state-run prison will likely require a shift of other inmates in that facility to private contract prisons. Therefore, this fiscal note assumes that the impact of this bill will be accommodated through the use of private contract prisons, and that no new capital construction funds are necessary.

Offenders placed in a private contract prison cost the state about \$60.46 per offender per day, including the current daily rate of \$55.08 and an estimated \$5.38 per offender per day for medical care provided by the DOC. No impact is expected in the first year because of the estimated time for criminal filing, trial, disposition, and sentencing. Table 2 shows the estimated cost of the bill over the next five fiscal years.

Table 2. Five-Year Fiscal Impact On Correctional Facilities				
Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2015-16	0.0	\$0	\$0	\$0
FY 2016-17	41.9	\$0	\$924,755	\$924,755
FY 2017-18	56.3	\$0	\$1,242,533	\$1,242,533
FY 2018-19	60.3	\$0	\$1,330,805	\$1,330,805
FY 2019-20	64.3	\$0	\$1,419,076	\$1,419,076
Total			\$4,917,169	\$4,917,169

Judicial Department. The bill will not necessarily create new court filings, rather, persons charged with crimes will be subject to more complex and lengthier trials. In addition, misdemeanor workload processed in the Denver County Court will transfer to a district court within the state system. The expected increase in the courts' workload can be accomplished within existing appropriations.

Office of the State Public Defender (OSPD). The OSPD may experience an increase in workload due to increases in the time and cost to litigate cases as felonies. To the extent this occurs, this analysis assumes the OSPD will request additional appropriations through the annual budget process.

Office of the Alternate Defense Counsel (ADC). The ADC represents clients when the OSPD has a conflict and, therefore, may incur costs under the bill. These costs have not been estimated but are anticipated to be minimal.

Local Government Impact

This bill affects local governments in three ways. First, it will increase the complexity and workload for district attorneys to prosecute offenses as a felonies rather than as misdemeanors. Second, by increasing the penalty for the offense of assaulting an emergency medical provider from a misdemeanor to a felony, revenue and costs for counties will decrease. Under current law, the penalty for a class 1 misdemeanor is 6 to 18 months in a county jail, a fine of \$500 to \$5,000, or both. The cost to house an offender in county jails varies from about \$53 to \$114 per day. Finally, it will reduce workload for the Denver County court.

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. The behavior prohibited by SB15-067 is punishable as a class 1 misdemeanor under current law. Over the past three years, there have been 198 convictions (66 per year) of this offense in state courts. Additional filings of at least 12 per year are assumed to occur in the City and County of Denver, for which precise data was not available as of this writing. No information about the gender or ethnicity of victims is available. The fiscal note assumes that the bill will not substantially alter the number of convictions for the prohibited assaults, but will increase the penalty for offenders whom choose to do so.

Effective Date

The bill takes effect and applies to offenses committed on or after September 1, 2015, if no referendum petition is filed.

State Appropriations

For FY 2015-16, the Department of Corrections requires the five-year appropriations of \$4,917,169 shown in Table 2, above.

Departmental Difference

The Department of Corrections identified five-year costs of \$9,694,953. The department's analysis assumes that 49 offenders per year will be sentenced to prison as a class 4 felony and serve an average sentence of 46.1 months in prison. The fiscal note assumes that due to the circumstances of the contact between an offender and emergency medical personnel, the majority of assaults are committed in passionate circumstances and will be classified as a class 6 felony, rather than as a class 4 felony. The fiscal note assumes that at least eight offenders per year will be classified as a class 4 felony and that any additional convictions at that level, or as a class 3 felony, will require the department to request additional appropriations through the annual budget process.

State and Local Government Contacts

Corrections
Judicial
Special Districts

Counties
Municipalities

District Attorneys
Sheriffs