



Legislative  
Council Staff

*Nonpartisan Services for Colorado's Legislature*

**SB 20-191**

# FINAL FISCAL NOTE

<b>Drafting Number:</b>	LLS 20-0425	<b>Date:</b>	September 17, 2020
<b>Prime Sponsors:</b>	Sen. Lee Rep. Weissman	<b>Bill Status:</b>	Postponed Indefinitely
		<b>Fiscal Analyst:</b>	Erin Reynolds   303-866-4146 Erin.Reynolds@state.co.us

**Bill Topic:** CHANGES TO FELONY MURDER

<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 would have changed the crime classification for certain felony offenses that result in the death of a person from a class 1 felony to a class 2 felony, among other provisions. It would have potentially increased state revenue beginning in FY 2020-21 and reduced state expenditures beginning in FY 2036-37.

**Appropriation  
Summary:** No appropriation was required.

**Fiscal Note  
Status:** The fiscal note reflects the introduced bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

## Summary of Legislation

Under current law, a person who acts alone or with one or more persons to commit or attempt to commit felony arson, robbery, burglary, kidnapping, specific crimes of sexual assault, or escape that results in the death of a person, other than a participant, caused by any participant in the crime can be convicted of first degree murder subject to a class 1 felony.

The bill changes the penalty for this crime to a class 2 felony and makes the following changes:

- requires the death be caused by a participant;
- repeals certain elements of the affirmative defense;
- clarifies that a court must sentence a defendant to a definite sentence within the aggravated range when the court finds certain aggravating circumstances; and
- provides that a defendant is subject to a mandatory sentence as a crime of violence if the fact finder makes specific findings related to use or threat of deadly weapons; threat, intimidation, and force; or causation of serious bodily injury.

## 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 changes an element of an existing crime. This section outlines data on the existing crime affected by this bill.

**Prior conviction data.** This bill changes the classification of an existing class 1 felony for first degree murder related to felony arson, robbery, burglary, kidnapping, specific crimes of sexual assault, and escape to a class 2 felony. From FY 2016-17 to FY 2018-19, 35 individuals have been convicted and sentenced for this existing offense. Of the persons convicted, all were male. Demographically, 19 were White, 10 were Black/African American, 3 were Hispanic, 0 were Asian, 1 was American Indian, and 2 did not have a race identified.

**Penalties and average length of stay.** Under current law, the penalty for a class 1 felony is a sentence of life imprisonment or death with no fine penalty and no parole, while the penalty for a class 2 felony crime of violence is a sentence of 16 to 48 years of imprisonment, a fine between \$5,000 and \$1 million, and a mandatory parole period of five years. The current average length of stay in prison for a class 1 felony is 40 years, while the current average length of stay in prison for a class 2 felony crime of violence is 16.8 years.

### **State Revenue**

Beginning in FY 2020-21, this bill may increase state cash fund revenue in the Judicial Department. By changing the penalty for a specific first degree felony murder charge from a class 1 felony with no fines to a class 2 felony, some offenders could be assessed a fine of up to \$1 million. Because the courts have the discretion of imposing a fine, the precise impact to state revenue cannot be determined. However, because fines are rarely imposed for a class 2 felony, the fiscal note assumes that any revenue generated is likely to be minimal. The fiscal note similarly assumes a minimal change for any court and administrative fees. This revenue is subject to TABOR.

### **State Expenditures**

Beginning in FY 2020-21, the bill may increase workload in the Judicial Department and in agencies representing indigent persons. Beginning in FY 2036-37, the bill will reduce costs in the Department of Correction (DOC).

**Judicial Department.** The bill is not expected to impact trial court caseload, but may impact the amount of time it takes to prosecute a case. Costs and workload may also increase in the agencies that provide representation to indigent persons, including the Office of the State Public Defender and the Office of Alternate Defense Council. Because the number of overall cases impacted by the bill is expected to be minimal, it is assumed that this workload can be accomplished within existing appropriations. Should a change in funding be required for any agency or division with the Judicial Department, the fiscal note assumes it will be addressed through the annual budget process.

**Department of Corrections.** Beginning no earlier than FY 2036-37, this bill will reduce state General Fund costs in the Department of Corrections. As discussed in the Comparable Crime Analysis section above, this assumes offenders convicted of the specific felony murder in the bill after September 1, 2020, will serve the current average length of stay for a class 2 felony crime of violence, which is 16.8 years in prison. As of this writing, it is not known what the annual cost for a prison bed will be that far into the future or if the current rate of convictions will continue. For informational purposes, the current cost of incarceration in a state prison is about \$42,665 per offender, per year. Offenders leaving prison will be required to participate in parole for at least five years. The current cost for parole is about \$5,862 per year, per offender. The fiscal note assumes the reduction in appropriations resulting from the bill will be addressed through the annual budget process.

**TABOR refunds.** The bill may minimally increase state General Fund obligations for TABOR refunds. Under the March 2020 LCS Economic and Revenue Forecast, the state is not expected to collect revenue above the TABOR limit in either FY 2020-21 or FY 2021-22, and refund obligations are not anticipated for these years. This bill does not change these expectations concerning refunds to taxpayers.

**Local Government Impact**

Similar to the state, district attorney workload may be minimally impacted. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

**Effective Date**

The bill was postponed indefinitely by the Senate Judiciary Committee on May 26, 2020.

**State and Local Government Contacts**

Corrections  
Information Technology

Counties  
Judicial

District Attorneys  
Law