



Colorado  
Legislative  
Council  
Staff

HB16-1080

FINAL  
FISCAL NOTE

**FISCAL IMPACT:** ☒ State ☐ Local ☐ Statutory Public Entity ☐ Conditional ☐ No Fiscal Impact

**Drafting Number:** LLS 16-0345

**Date:** August 24, 2016

**Prime Sponsor(s):** Rep. Foote; Landgraf  
Sen. Cooke; Johnston

**Bill Status:** Signed into Law

**Fiscal Analyst:** Kerry White (303-866-3469)

**BILL TOPIC:** ASSAULT BY STRANGULATION

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
<b>State Revenue</b>		
Cash Funds	<\$5,000	<\$5,000
<b>State Expenditures</b>		
General Fund	See State Expenditures section.	\$43,727
<b>TABOR Impact</b>	<\$5,000	<\$5,000
<b>Appropriation Required:</b> \$433,262 - Department of Corrections (FY 2016-17 to FY 2020-21).		
<b>Future Year Impacts:</b> Ongoing state revenue and state expenditure increases.		

### Summary of Legislation

This bill classifies strangulation with the intent to cause serious bodily injury as first degree assault, and strangulation with intent to cause bodily injury as second degree assault. The bill designates second degree assault by strangulation as an extraordinary risk crime, thus increasing the maximum presumptive sentence range. The bill defines strangulation as impeding or restricting the breathing or circulation of another person by applying pressure to the neck, or by blocking the nose or mouth of the person, leading to injury.

### Background and Comparable Crime

**First degree assault.** In calendar year 2014, the most recent full calendar year for which data are available and excluding offenses against law enforcement personnel, there were 96 convictions for first degree assault. A total of 94 of the 96 cases resulted in prison sentences. Of this number, 93 were male (65 Caucasian, 15 African American, 9 Hispanic, and 4 Other) and 3 were female (2 Caucasian, and 1 Other).

Under current law, first degree assault is a class 3 felony crime of violence, which, as an extraordinary risk crime, requires a mandatory term of incarceration of 10 to 32 years. Attempted first degree assault or cases that involve passionate circumstances may be charged as either a class 4 felony or a class 5 felony, depending on the circumstances.

**Second degree assault.** Over the same period and excluding offenses against law enforcement personnel and cases of drugging a victim, there were 314 convictions for second degree assault. Of this number, 288 cases resulted in prison sentences. Of the 314 total cases, 295 were male (232 Caucasian, 36 African American, 22 Hispanic, 1 Asian, and 4 Other or Unspecified) and 18 were female (12 Caucasian and 6 African American) and 1 was unclassified.

Generally, second degree assault is a class 4 felony crime of violence, which, as an extraordinary risk crime, requires a mandatory term of incarceration of 5 to 16 years. Attempted second degree assault or cases that involve passionate circumstances may be charged as either a class 5 felony or a class 6 felony, depending on the circumstances. Cases involving the commission of another felony are charged as a class 3 felony.

**Other types of cases that may involve strangulation.** According to a 2014 document published by the National District Attorneys Association, 43 states have some form of statutory prohibition for strangulation or impeding breath. Colorado does not explicitly prohibit strangulation except in its criminal statutes for elder abuse. Court databases do not track which cases involve strangulation; for this reason, isolating cases where strangulation occurred is difficult.

According to a 2011 article in the American Bar Association's *Criminal Justice* magazine, most victims of strangulation lack visible injuries or evidence to corroborate strangulation. The Colorado Bar Association's Bench Book on Domestic Violence references a 2001 San Diego study of 300 strangulation victims which found that 50 percent of victims had no visible injuries and 89 percent had prior histories of domestic violence. The Bench Book also notes that harassment and third degree assault cases can involve strangulation. According to a 2001 article in *The Journal of Emergency Medicine*, between 47 and 68 percent of domestic violence victims have been strangled by a domestic partner. Third degree assault occurs when a person knowingly or recklessly causes bodily injury to another person or with criminal negligence the person causes bodily injury to another person by means of a deadly weapon or by exposing certain law enforcement and medical personnel to bodily fluids. Third degree assault is a class 1 misdemeanor, subject to modified sentencing as an extraordinary risk crime. Harassment, which can include shoving or kicking, obscene gestures, stalking, and other related crimes, and is often charged in domestic violence cases, is a class 1 misdemeanor. Excluding offenses against law enforcement and medical personnel, in calendar year 2014, there were a total of 1,851 convictions for cases that involved both third degree assault and harassment.

## **Assumptions**

This analysis assumes that strangulation is currently being prosecuted as a form of assault or attempted murder. According to the Colorado District Attorneys' Council (CDAC), the majority of cases involving strangulation where bodily injury or serious bodily injury occur are charged as second degree or first degree assault, respectively. However, the standard being proposed under HB16-1080 may be easier to prove since the criterion under this bill only requires that airflow be restricted or impeded and that the relevant level of injury occur. In these cases, this analysis assumes that the result may be less need for expert testimony, shortened trials, and additional convictions.

As of this writing and after conversations with the CDAC and Judicial Department, there are no data available from which to make reliable projections. As such, this analysis assumes that one additional conviction of assault in the first degree (as a class 3 felony crime of violence) and one additional conviction of assault in the second degree (as a class 4 felony crime of violence) will occur each year, at a minimum.

Third degree assault only requires knowingly or recklessly causing bodily injury, it does not require the intent to cause injury as required for first degree or second degree assault. Because the bill does not address third degree assault, this analysis assumes that none of these cases will be reclassified as first or second degree assault.

### **State Revenue**

Beginning in FY 2016-17, this bill is anticipated to increase state cash fund revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a class 3 felony is \$3,000 to \$750,000. The fine penalty for a class 4 felony is \$2,000 to \$500,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, based on the low number of fines imposed in 2015, the fiscal note assumes that any revenue generated is likely to be less than \$5,000.

### **TABOR Impact**

This bill increases state revenue from fines, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund.

### **State Expenditures**

**This bill is anticipated to increase state General Fund expenditures by at least \$433,262 over a five-year period.** Due to the length of adjudication, these costs are expected to begin in FY 2017-18 and affect the Department of Corrections (DOC). This increase assumes that each year, at least one offender will be convicted of a class 3 felony crime of violence and have an average length of stay of 74.7 months and one offender will be convicted of a class 4 felony crime of violence and have an average length of stay of 45.8 months.

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 \$59.90 per offender per day, including the current daily rate of \$56.02 and an estimated \$3.88 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 1 shows the estimated cost of the bill over the next five fiscal years.

Table 1. Five-Year Fiscal Impact On Correctional Facilities				
Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2016-17	0.0	\$0	\$0	\$0
FY 2017-18	2.0	0	43,727	43,727
FY 2018-19	4.0	0	87,454	87,454
FY 2019-20	6.0	0	131,181	131,181
FY 2020-21	7.8	0	170,900	170,900
<b>Total</b>				<b>\$433,262</b>

**Judicial Department.** This bill is not anticipated to result in new case filings, but may result in shorter trials. It may also reduce costs associated with expert testimony or providing representation by the Office of the State Public Defender or Alternate Defense Counsel. These impacts are not expected to result in a reduction in appropriations for any agency within the Judicial Department. If the bill does result in new case filings, the fiscal note assumes that an impacted agency will request additional appropriations through the annual budget process.

### Effective Date

The bill was signed into law by the Governor on June 10, 2016. The bill took effect and applies to offenses committed on or after July 1, 2016.

### State Appropriations

The bill requires and includes the five-year appropriations for the Department of Corrections as shown in Table 1.

### State and Local Government Contacts

Corrections      District Attorneys      Information Technology      Judicial

### Research Note Available

An LCS Research Note for HB16-1080 is available online and through the iLegislate app. Research notes provide additional policy and background information about the bill and summarize action taken by the General Assembly concerning the bill.