

Updated for amendments adopted through May 12, 2009.

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES *				
	FY 2009-10		FY 2010-11	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	100,000		100,000	
CASH FUNDS	440,000		0	
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	540,000		100,000	

*Does not include any impact on political subdivisions. See narrative for political subdivision estimates.

This bill, as amended, would change provisions relating to assault, firearms, graffiti, gang affiliation, juveniles, and jailhouse informers. It outright repeals certain sections. The bill has the emergency clause.

This revised fiscal note summarizes the provisions of the amended bill that may have a fiscal impact. Other provisions that are in the amended bill but that do not have any fiscal impact are not mentioned in this revised fiscal note.

The Office of Violence Prevention is created by this amended bill. It is to be located in the Crime Commission. The office shall consist of a director, appointed by the Governor, and an advisory council. The members of the advisory council are not paid but can be reimbursed for their expenses.

The amended bill creates the Violence Prevention Cash Fund that is administered by the Crime Commission. The fund's revenues are as follows: money that is transferred by the Legislature, donated as gifts, bequests, or other contributions, or made available by any department or agency of the United States.

The amended bill transfers \$350,000 from the Community Corrections Uniform Data Analysis Cash Fund into the Violence Prevention Cash Fund. The Crime Commission is to distribute these funds to organizations that have submitted violence prevention plans and that best meet the intent of reducing gang violence and reducing homicides and injuries caused by firearms. When the Office of Violence Prevention is operational it shall assume responsibility for administering funding for the program.

The Crime Commission estimates the cost to operate the Office of Violence Prevention (OVP) as follows:

	FY2009-2010	FY2010-2011
ITEMS	Expenditures	
Director	70,000	70,000
Benefits	25,433	25,433
Other	4,567	4,567
Total	100,000	100,000

The Crime Commission states that the cost of benefits assumes 2 party health insurance. The "other" item in the above table would need to cover the operating costs of the OVP, such as rent, advisory council expenses, office supplies, etc.

The amended "A" bill appropriates \$90,000 from the Community Corrections Uniform Data Analysis Cash Fund in FY2009-2010 to the Community Corrections Council for criminal justice technology projects.

The Supreme Court anticipates a minimal expenditure increase associated with programming changes to JUSTICE to reflect the new penalties and offenses. JUSTICE is funded with court fees (cash funds) so there would not be a General Fund impact.

The amended bill would change employment provisions of persons committed to the Department of Correctional Services (DCS). DCS would be able to enter into arrangements with school districts, educational service units, community colleges, state colleges or universities for the employment of inmates. DCS would be required to supervise these inmates. DCS states that these provisions will expand work opportunities for inmates from the Community Corrections Centers in Omaha and Lincoln and the Work Ethic Camp at

McCook. The practice of DCS is to provide supervision for inmates on such work details. Most inmates and their supervisors on these work details are paid from the Correctional Industries Revolving Fund for work at Cornhusker State Industries through agreements with other state agencies or political subdivisions. This amended bill could expand the number of inmates employed which could result in an increase in revenues and expenditures from the Correctional Industries Revolving Fund. DCS states that the revolving fund could handle any increased expenditures without an additional appropriation. There is no General Fund Impact regarding these provisions of the amended bill.

Following is the response from the Department of Correctional Services (DCS):

LB 63, as amended, includes the following:

LB 63 as amended by AM212 includes the following provisions which could have an impact on the Department of Correctional Services:

1) changes a number of provisions regarding firearms and deadly weapons, including adding new offenses, and exceptions, and increases the penalties

Impact of these Provisions: 1) Increasing penalties for firearms and deadly weapons and new offenses: These provisions of the bill could have a fairly substantial impact on the DCS population. In FY07, there were 121 admissions for firearms/deadly weapon offenses. In FY08 there were 118 admissions for firearms/deadly weapon offenses, and through early January 2009 there were 51 admissions for firearms/deadly weapon offenses.

The major immediate impact would be offenses that increase or establish minimum sentences (from 0 year minimum to three or five year minimums), and offenses that are currently misdemeanors going to Class IV felonies (0-5 years) The new offenses of possession of a deadly weapon during the commission of a felony provides Class III (1-20 yrs) and Class II (1-50 yrs) penalties. It is unknown how many individuals might be convicted under these provisions, but there are currently between 60 and 70 individuals sentenced per year for use of a deadly weapon to commit a felony. The penalty for use of a deadly weapon to commit a felony increases from a Class II (1-50 years) to a Class IC (5-50 years). Based on current admissions, this change in the penalty for use of a deadly weapon to commit a felony would result in an increased minimum time of between 100 and 140 years each year (60 or 70 individuals each year times 2 years increase minimum actually served). Although the maximums also change with a number of the offenses, the fiscal note does not assume the court will impose or change the maximum sentences given.

2) expands the offense of possession of a deadly weapon or firearm by a felon to include a 'prohibited' person. A prohibited person is a felon, or a fugitive from justice, or a person who has been convicted within the past seven years of a misdemeanor crime of domestic violence, or who is the subject of a current and validly issued domestic violence protection order, and who knowingly violates such order. The penalty is also increased from a Class IV felony (for other than a firearm) to a Class III felony; and for possession of a firearm is increased from a Class III felony to a Class ID felony for a first offense, and to a Class IB felony for a second or subsequent offense.

Impact of these Provisions: 2) Possession of a firearm by a prohibited person. Violation of these provisions is a Class ID (3-50 yrs) felony for a first offense for possession of a firearm, and a Class IB (20 to life) felony for a second offense. Possession of a deadly weapon not a firearm is a Class III felony (1-20 years). The Department of Correctional Services (DCS) does not have any data on how many individuals who have been convicted of a misdemeanor crime of domestic violence, or have a domestic violence protection order active on them and which they knowingly violate might be prosecuted and sentenced under these provisions.

There were 17 Individuals in FY07, 25 individuals in FY08, and 13 individuals so far in FY09 who have been convicted of possession of a deadly weapon by a felon. Increasing the penalty for felons from 0 to 1 yr minimum (possession of a deadly weapon not a firearm) and from 1 to 3 years minimum (possession of a firearm by a felon). The impact would be a possible increase in the minimum time served of between 6.5 and 19.5 years. Although the maximums also change with a number of the offenses, the fiscal note does not assume the court will impose or change the maximum sentences given.

3) increases the penalties for assault in the 1st degree and assault in the second degree, and assault on an officer.

Impact of these Provisions: 3) increasing penalties for assault: DCS has had 50 admissions each in FY07 and FY08, and 27 so far in FY09 for assault in the 2nd degree. Increasing the minimum from 0 years to one year (Class IIIA to Class III felony) would result in an increased minimum number of years of 25 years. DCS has had 3 admissions for assault on an officer in the 1st degree in FY07, and 2 admissions in FY08. Increasing the minimum sentence to three years would increase the minimum time served by approximately three years. Although the maximums also change with a number of the offenses, the fiscal note does not assume the court will impose or change the maximum sentences given.

4) creates the offense of unauthorized application of graffiti (Class III misdemeanor offense for 1st offense and Class IV felony for second or subsequent offenses).

Impact of these Provisions: 4) DCS is unable to estimate an impact on inmate population of the remaining provisions of the bill.

DCS current inmate population is 4401 (3/05/2009). The FY08 per diem (cost per day of feeding, clothing, housing, medical, etc) for an individual inmate was \$5,509/yr.

DEPARTMENT OF ADMINISTRATIVE SERVICES

REVIEWED BY	Joe Wilcox	DATE	3/10/09	PHONE	471-2526
COMMENTS					
CRIME COMMISSION: Do not disagree with agency analysis relative to the director position, although the amendment also allows for the expenses of the board for meetings, which will also be administered by the Crime Commission. Also, Section 35 of AM212 establishes a new cash fund but there is no estimate of cash fund revenues or expenses.					