

*Colorado Legislative Council Staff Fiscal Note*

**STATE and LOCAL  
REVISED FISCAL IMPACT**

(replaces fiscal note dated February 15, 2013)

**Drafting Number:** LLS 13-0372  
**Prime Sponsor(s):** Rep. Pabon  
 Sen. King

**Date:** March 6, 2013  
**Bill Status:** House Appropriations  
**Fiscal Analyst:** Jessika Shipley (303-866-3528)

**TITLE:** CONCERNING CRIMINAL THEFT.

<b>Fiscal Impact Summary</b>	<b>FY 2013-2014</b>	<b>FY 2014-2015</b>
<b>State Revenue</b>	Potential change	
Cash Funds		
Fines Collection Cash Fund		
<b>State Expenditures</b>		
General Fund	(\$882,925)	(\$1,464,885)
<b>FTE Position Change</b>	(6.0 FTE)	(6.0 FTE)
<b>Effective Date:</b> Upon signature of the Governor, or upon becoming law without his signature.		
<b>Appropriation Summary for FY 2013-2014:</b> See State Appropriations section.		
<b>Local Government Impact:</b> See Local Government Impact section.		

**Summary of Legislation**

This bill, *as amended by the House Judiciary Committee*, repeals the existing crimes of theft of rental property, theft by receiving, fuel piracy, and newspaper theft. It amends the crime of theft to include theft of rental property and theft by receiving.

The bill adjusts all of the penalties for the crime of theft, based on the value of the goods or property stolen, making some current felonies into misdemeanors and some current misdemeanors into class 1 petty offenses. Table 1 shows the current and proposed offense levels for the different value thresholds, as well as the standard sentencing range for each level of offense.

<b>Table 1. Current and Proposed Penalty Levels for Theft Crimes Under HB 13-1160</b>			
<b>Offense Level</b>	<b>Sentencing Range</b>	<b>Value Thresholds Under Current Law</b>	<b>HB 13-1160 Value Thresholds</b>
Class 2 felony	8 to 24 years in prison, \$5,000 to \$1 million fine, or both	There is no class 2 felony theft offense under current law.	\$1 million or more
Class 3 felony	4 to 12 years in prison, \$3,000 to \$750,000 fine, or both	\$20,000 or more	Between \$100,000 and \$1 million
Class 4 felony	2 to 6 years in prison, \$2,000 to \$500,000 fine, or both	Between \$1,000 and \$20,000	Between \$20,000 and \$100,000
Class 5 felony	1 to 3 years in prison, \$1,000 to \$100,000 fine, or both	Between \$1,000 and \$20,000 (rental property)	Between \$5,000 and \$20,000
Class 6 felony	1 year to 18 months in prison, \$1,000 to \$100,000 fine, or both	There is no class 6 felony theft offense under current law	Between \$2,000 and \$5,000
Class 1 misdemeanor	6 to 18 months in county jail, \$500 to \$5,000 fine, or both	Between \$500 and \$1,000	Between \$750 and \$2,000
Class 2 misdemeanor	3 to 12 months in county jail, \$250 to \$1,000 fine, or both	Less than \$500	Between \$300 and \$750
Class 3 misdemeanor	Up to 6 months in county jail, \$50 to \$750 fine, or both	There is no class 3 misdemeanor theft offense under current law	Between \$50 and \$300
Class 1 petty offense	Up to 6 months in county jail, up to \$500 fine, or both	There is no class 1 petty offense theft offense under current law	Less than \$50

**State Revenue**

The bill may change the amount of fine revenue collected each year. Table 1 shows the potential fines for the crimes addressed by the bill. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to state revenue cannot be determined, but is expected to be minimal. Fine revenue that is not otherwise appropriated is deposited into the Fines Collection Cash Fund.

**State Expenditures**

*The bill will result in a reduction in General Fund expenditures of \$882,925 and 6.0 FTE in FY 2013-14 and \$1,464,885 and 6.0 in FY 2014-15.* The savings will occur as a result of a net decrease in the number of offenders and the duration of their stays in the Department of Corrections, as well as a reduced workload in the Judicial Branch and the Office of the State Public Defender. These reduced expenditures are explained in more detail in the following sections.

**Corrections.** In FY 2011-12, 361 offenders were sentenced to the Department of Corrections (DOC) with the crime of theft as their most serious offense. Of those, 137 offenders would receive the same sentence due to the value of the goods or property stolen or the fact that they also committed another non-theft crime of the same felony level. The remaining 224 offenders would receive adjusted sentences as a result of the bill.

Beginning in FY 2013-14 and continuing into FY 2014-15, 6 offenders would receive longer sentences, 169 offenders would receive shorter sentences, and 49 offenders would become ineligible for sentencing to the DOC. The estimated net impact to the DOC is a reduction of 51.4 offenders per year. While the DOC impact is generally shown in the second year of implementation to account for the time it takes to commit a crime and be tried and sentenced, the fiscal note assumes that half of the 49 offenders who will go from felony to misdemeanor convictions will be tried, convicted and sentenced within the first year of implementation, based on the historical progression and duration of most misdemeanor cases.

Offenders placed in a private contract prisons cost the state about \$57.03 per offender per day, including the current daily rate of \$52.69 and an estimated \$4.34 per offender per day for medical care provided by the DOC. Table 2 shows the estimated savings from the bill over the next two fiscal years.

<b>Fiscal Year</b>	<b>Inmate Bed Impact</b>	<b>Operating Cost Per Offender</b>	<b>Total Cost (Savings)</b>
FY 2013-14	(25.0)	\$20,816	(\$520,400)
FY 2014-15	(51.4)	20,816	(\$1,069,942)
<b>Total</b>	(51.4)		(\$1,590,342)

**Judicial Branch.** The branch will experience decreased expenditures as a result of the bill. An estimated 675 theft cases each year that are currently heard in district court will be moved to county court due to the adjustment of the penalty levels from felonies to misdemeanors. According to the branch's weighted caseload model, 675 felony cases require approximately 1 magistrate and 3 support staff; misdemeanor cases require 0.25 magistrate and 0.5 support staff. This results in a net reduction of 0.8 magistrate and 2.5 support staff. The reduced expenditures are shown in Table 3.

<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Personal Services	(\$186,382)	(\$203,324)
FTE	(3.3)	(3.3)
Operating Expenses	(5,901)	(5,901)
<b>TOTAL</b>	<b>(\$192,283)</b>	<b>(\$209,225)</b>

Additionally, the Division of Probation Services expects to see an overall decrease in the number of offenders sentenced to adult and juvenile probation. However, the decrease is negligible and will not require a reduction in expenditures or FTE.

**State Public Defender.** In FY 2013-14, the Office of the State Public Defender (OSPD) will require a General Fund reduction of \$ 170,242 and 2.7 FTE. This reduction occurs as a result of adjusting some current felonies to misdemeanor offenses and some misdemeanor offenses to petty offenses. The lower-level offenses require less attorney time per case. The reduced expenditures are shown in Table 4.

<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Personal Services	(\$167,891)	(\$183,153)
FTE	(2.7)	(2.7)
Operating Expenses	(\$2,351)	(\$2,565)
<b>TOTAL</b>	<b>(\$170,242)</b>	<b>(\$185,718)</b>

**Alternate Defense Counsel.** The Office of the Alternate Defense Counsel (OADC) will likely experience a reduced workload as a result of the bill for the same reason as the OSPD. However, because the OADC only defends cases when the OSPD has a conflict of interest, and without knowing the number of cases that will be filed at each new dollar amount threshold, the fiscal note is unable to estimate the impact to the OADC. Any reduced impact will be addressed through the annual budget process.

**Comparable Crimes**

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. HB 13-1160 changes the classification for a number of felony and misdemeanor offenses. Table 1 provides a side-by-side comparison of the crime classifications and value thresholds under current law and those proposed by the bill. All of the theft offenses addressed in the bill may be charged under current law. As previously stated, the bill is expected to result in 6 offenders receiving longer sentences, 169 offenders receiving shorter sentences, and 49 offenders becoming ineligible for sentencing to the DOC.

**Expenditures Not Included**

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. The centrally appropriated costs subject to this policy are summarized in Table 5.

<b>Table 5. Expenditures Not Included Under HB 13-1160*</b>		
<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	(\$35,998)	(\$35,998)
Supplemental Employee Retirement Payments	(21,745)	(26,839)
<b>TOTAL</b>	<b>(\$57,743)</b>	<b>(\$62,837)</b>

\*More information is available at: <http://colorado.gov/fiscalnotes>

**Local Government Impact**

The bill increases the dollar amount thresholds for current class 1 and class 2 misdemeanor theft offenses and creates a new class 3 misdemeanor theft offense. It is estimated that 49 offenders are sentenced to the DOC each year who will no longer be eligible for prison sentences. Instead, they will likely receive sentences to probation, county jail, or another alternative sentencing option.

The penalty for a class 1, 2, or 3 misdemeanor ranges from 0 to 18 months in a county jail, a fine of \$50 to \$5,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails a daily rate of \$50.44 to house state inmates. It is assumed that the impact of this new misdemeanor will be minimal and will not create the need for additional county jail space.

**State Appropriations**

For FY 2013-14, the following General Fund reductions are required:

Department of Corrections	\$520,400	
Judicial Branch	\$192,283	3.3 FTE
Office of the State Public Defender	\$170,242	2.7 FTE

**Departments Contacted**

Corrections	Judicial	Counties
Law	District Attorneys	Sheriffs
Human Services		