

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
FISCAL IMPACT**

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|--|---|
| Drafting Number: LLS 14-0833 | Date: March 10, 2014 |
| Prime Sponsor(s): Rep. McCann; Gardner Sen. Newell; King | Bill Status: House Judiciary |
| | Fiscal Analyst: Kerry White (303-866-3469) |

SHORT TITLE: VALUE-BASED CRIME THRESHOLD LEVEL CHANGES

| Fiscal Impact Summary* | FY 2014-2015 | FY 2015-2016 |
|--|----------------------------|---------------------|
| State Revenue | | |
| Cash Funds | See State Revenue section. | |
| State Expenditures | (\$82,843) | (\$277,483) |
| General Fund | (\$69,408) | (\$261,245) |
| Centrally Appropriated Costs** | (\$13,435) | (\$16,238) |
| FTE Position Change | (1.2) FTE | (1.4) FTE |
| Appropriation Required: (\$69,408) - Office of the State Public Defender (FY 2014-15) | | |

* This summary shows changes from current law under the bill for each fiscal year. Parentheses indicate a decrease in funds.

** These costs are not included in the bill's appropriation. See the State Expenditures section for more information.

Summary of Legislation

This bill makes adjustments to the crimes of criminal mischief, fraud by check, defrauding a secured creditor or debtor, unauthorized use of a financial transaction device, and computer crime. The bill adjusts the penalties for these crimes based on the value of the goods or property stolen, making some current felonies into misdemeanors and some current misdemeanors into lower level offenses, including petty offenses.

Table 1, on the following page, shows the current and proposed offense levels for the different value thresholds, as well as the standard sentencing range for each level of offense.

| Table 1. Current and Proposed Penalty Levels for Theft Crimes Under HB 14-1266 | | | |
|---|---|--|---|
| Offense Level | Sentencing Range | Value Thresholds Under Current Law | HB 14-1266 Value Thresholds |
| Class 2 felony | 8 to 24 years in prison, \$5,000 to \$1 million fine, or both | CM: not applicable F: not applicable D: not applicable U: not applicable CC: not applicable | CM: more than \$1 million F: not applicable D: more than \$1 million U: more than \$1 million CC: more than \$1 million |
| Class 3 felony | 4 to 12 years in prison, \$3,000 to \$750,000 fine, or both | CM: more than \$20,000 F: not applicable D: \$20,000 or more U: \$20,000 or more CC: \$20,000 or more | CM: \$100,000 to \$999,999 F: not applicable D: \$100,000 to \$999,999 U: \$100,000 to \$999,999 CC: \$100,000 to \$999,999 |
| Class 4 felony | 2 to 6 years in prison, \$2,000 to \$500,000 fine, or both | CM: \$1,000 to \$19,999 F: not applicable D: not applicable U: not applicable CC: \$1,000 to \$19,999 | CM: \$20,000 to \$99,999 F: not applicable D: \$20,000 to \$99,999 U: \$20,000 to \$99,999 CC: \$20,000 to \$99,999 |
| Class 5 felony | 1 to 3 years in prison, \$1,000 to \$100,000 fine, or both | CM: not applicable F: not applicable D: \$1,000 to \$19,999 U: \$1,000 to \$19,999 CC: not applicable | CM: \$5,000 to \$19,999 F: not applicable D: \$5,000 to \$19,999 U: \$5,000 to \$19,999 CC: \$5,000 to \$19,999 |
| Class 6 felony | 1 year to 18 months in prison, \$1,000 to \$100,000 fine, or both | CM: not applicable F*: more than \$1,000 or two prior convictions D: not applicable U: not applicable CC: not applicable | CM: \$1,000 to \$4,999 F*: \$2,000 or more D: \$1,000 to \$4,999 U: \$1,000 to \$4,999 CC: \$2,000 to \$4,999 |
| Class 1 misdemeanor | 6 to 18 months in county jail, \$500 to \$5,000 fine, or both | CM: \$500 to \$999 F*: \$500 to \$999 D: \$500 to \$999 U: less than \$1,000 CC: \$500 to \$999 | CM: \$750 to \$999 F*: \$750 to \$1,999 D: \$750 to \$999 U: \$750 to \$999 CC: \$750 to \$1,999 |
| Class 2 misdemeanor | 3 to 12 months in county jail, \$250 to \$1,000 fine, or both | CM: less than \$500 F*: less than \$500 D: less than \$500 U: not applicable CC: less than \$500 | CM: \$300 to \$749 F*: \$300 to \$749 D: \$300 to \$749 U: \$300 to \$749 CC: \$300 to \$749 |
| Class 3 misdemeanor | Up to 6 months in county jail, \$50 to \$750 fine, or both | CM: not applicable F: not applicable D: not applicable U: not applicable CC: not applicable | CM: less than \$300 F: not applicable D: \$50 to \$299 U: \$50 to \$299 CC: \$50 to \$299 |
| Class 1 petty offense | Up to 6 months in county jail, up to \$500 fine, or both | CM: not applicable F: not applicable D: not applicable U: not applicable CC: not applicable | CM: not applicable F*: less than \$50 D: less than \$50 U: less than \$50 CC: less than \$50 |

CM: criminal mischief. **F:** fraud by check, **F*** means that it also applies when two or more checks are written in the aggregate of the amount within 60 days. **D:** defrauding a secured creditor / debtor. **U:** unauthorized use of a financial transaction device. **CC:** computer crime.

State Revenue

Beginning in FY 2014-15, this bill may increase or decrease the amount of fine penalty revenue collected. Table 1, above, shows the potential fines for the crimes under HB14-1266. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to state revenue cannot be determined, but is anticipated to be minimal. The fiscal note assumes that in most cases, revenue will decrease. Fine penalty revenue is credited to the Fines Collection Cash Fund in the Judicial Department.

State Expenditures

This bill will reduce General Fund expenditures by \$82,843 and 1.2 FTE for FY 2014-15 and \$277,483 and 1.4 FTE in FY 2015-16. Savings will occur as a result of a net decrease in the number of offenders and the duration of incarceration within the Department of Corrections, as well as reduced workload and costs within agencies of the Judicial Department.

Corrections. In FY 2012-13, 163 offenders were sentenced to the Department of Corrections (DOC) with criminal mischief, fraud by check, defrauding a secured creditor or debtor, unauthorized use of a financial transaction device, or computer crime as their most serious offense. In most cases, the dollar value of the offenses was not available, so adjustments in prison stays were based on identifiable changes in felony class. This results in the following changes:

- 5 offenders currently convicted of a class 3 felony would instead be convicted of a class 4 felony, reducing the length of stay by 18.5 months per offender;
- 1 offender currently convicted of a class 3 felony would instead be convicted of a class 5 felony, reducing the length of stay by 41.6 months;
- 108 offenders currently convicted of a class 4 felony would instead be convicted of a class 5 felony, reducing the length of stay by 23.1 months per offender;
- 7 offenders currently convicted of a class 4 felony would instead be convicted of a class 6 felony, reducing the length of stay by 34.6 months per offender;
- 12 offenders currently convicted of a class 5 felony would instead be convicted of a class 6 felony, reducing the length of stay by 11.5 months per offender;
- 7 offenders currently convicted of a class 6 felony will have no changes in sentencing;
- 8 offenders currently convicted of a class 6 felony would instead be convicted of a misdemeanor or petty offense, reducing the length of stay by 11.5 months per offender (these offenders may be sentenced to jail instead); and
- 15 offenders have more serious offenses that will not result in a change in sentencing or length of stay.

Offenders sentenced under this bill to DOC may be placed in either a state-run or a private contract prison, depending on several factors. Offenders placed in a private contract prison cost the state about \$58.86 per offender per day, including the current daily rate of \$53.74 and an estimated \$5.12 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 reduction in costs over the next five fiscal years.

| Table 2. Five-Year Fiscal Impact On Correctional Facilities Under HB14-1266 | | | | |
|--|--------------------------|--------------------------|-----------------------|----------------------|
| Fiscal Year | Inmate Bed Impact | Construction Cost | Operating Cost | Total Cost |
| FY 2014-15 | 0.0 | \$0 | \$0 | \$0 |
| FY 2015-16 | (8.4) | \$0 | (\$181,145) | (\$181,145) |
| FY 2016-17 | (27.1) | \$0 | (\$581,211) | (\$581,211) |
| FY 2017-18 | (116.0) | \$0 | (\$2,492,132) | (\$2,492,132) |
| FY 2018-19 | (98.6) | \$0 | (\$2,117,954) | (\$2,117,954) |
| Total | | | (\$5,372,443) | (\$5,372,443) |

It should be noted that the bill creates an option for a class 2 felony when the value of the items stolen exceeds \$1 million for all covered offenses except fraud by check. To the extent that persons are convicted of a class 2 felony, costs will increase for the DOC. The average length of stay for a class 2 felony is 480 months. Based on the distribution of persons currently incarcerated for these offenses, the fiscal note assumes that the likelihood of a new class 2 felony conviction under the bill is low.

Table 3 and the discussion that follows summarize the cost reductions and workload changes for the Judicial Department under the bill.

| Table 3. Reduction in Expenditures for the Judicial Department Under HB14-1266 | | |
|---|-------------------|-------------------|
| Cost Components | FY 2014-15 | FY 2015-16 |
| Personal Services | (\$67,270) | (\$77,615) |
| FTE | (1.2) FTE | (1.4) FTE |
| Operating Expenses | (1,140) | (1,330) |
| Travel | (998) | (1,165) |
| Centrally Appropriated Costs* | (13,435) | (16,238) |
| TOTAL | (\$82,843) | (\$96,348) |

* Centrally appropriated costs are not included in the bill's appropriation.

Judicial Department. By changing the classification of some offenses, certain cases will be heard in county court rather than in district court. In addition, the bill creates new petty offenses that will be heard in county courts. Based on the current distribution of persons incarcerated within the DOC, the fiscal note assumes that only a small number of cases will be transferred to county courts. In addition, by lowering the penalties for several offenses under the bill, workload is anticipated to increase for probation staff, either because offenders are more likely to receive a sentence that includes probation for what is being reclassified as a lower level felony or because what was previously a felony will now be classified as a misdemeanor. In cases where the penalty is increased, the fiscal note assumes that workload will not be impacted. Based on the number of persons currently incarcerated for offenses covered under HB14-1266, the fiscal note assumes no adjustments in appropriations are required for the trial courts or probation services division.

Office of the State Public Defender (OSPD). By reducing the penalties for certain offenses, the bill is anticipated to reduce attorney caseload for the OSPD by 1,519 hours or 0.9 FTE. Associated investigator and administrative support workload is reduced by 0.3 FTE and 0.2 FTE respectively. First year salary impacts are prorated based on the effective date of the bill and to account for the General Fund paydate shift. Reductions in standard operating and travel costs are also provided.

Office of the Alternate Defense Counsel (ADC). The ADC provides representation to indigent defendants when the OSPD has a conflict. By adjusting the classifications for certain offenses, costs may both increase and decrease. Because the ADC provides representation as an alternative to the OSPD, it is not possible to calculate the change in costs. The fiscal note assumes that any required adjustments in appropriations for the ADC will be addressed during the annual budget process.

Centrally appropriated costs. 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 estimated in the fiscal note for informational purposes and summarized in Table 4.

| Table 4. Centrally Appropriated Costs Under HB14-1266* | | |
|--|-------------------|-------------------|
| Cost Components | FY 2014-15 | FY 2015-16 |
| Employee Insurance (Health, Life, Dental, and Short-term Disability) | (\$8,763) | (\$10,222) |
| Supplemental Employee Retirement Payments | (4,672) | (6,016) |
| TOTAL | (\$13,435) | (\$16,238) |

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

Local Government Impact

By shifting certain offenses from a felony to a misdemeanor, this will affect local governments in two ways. First, it will increase revenue, trial court, and probation services workload for cases filed in the City and County of Denver rather than in Denver District Court, and for the new petty offenses.

Second, to the extent that an offender is given jail time as part of his or her sentence, costs for counties will increase. 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 penalty for a class 2 misdemeanor is 3 to 12 months in jail, a fine of \$250 to \$1,000, or both. The penalty for a class 3 misdemeanor is up to 6 months in jail, a fine of \$50 to \$750, or both. The penalty for a petty offense is set in statute, as discussed above. 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 at a daily rate of \$51.45 to house state inmates. It is assumed that the impact of this bill will be minimal.

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. As discussed above, in FY 2012-13, 163 offenders were sentenced to the DOC with criminal mischief, fraud by check, defrauding a secured creditor or debtor, unauthorized use of a financial transaction device, or computer crime offenses. Of the 163 offenders, the following demographics apply:

- 143 are male and 20 are female; and
- 98 are Caucasian, 45 are Hispanic/Latino; 15 are African American; 3 are Native American; and 2 are Asian.

No information about the gender or minority status of victims was available as of this writing.

Effective Date

The bill takes effect and applies to offenses committed on or after August 6, 2014, if the General Assembly adjourns on May 7, 2014, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2014-15, the bill requires a reduction of \$69,408 General Fund and 1.2 FTE for the Office of the State Public Defender.

State and Local Government Contacts

| | | | |
|----------------|----------|--------------------|----------|
| Corrections | Counties | District Attorneys | Judicial |
| Municipalities | Sheriffs | | |