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HB11-1501

Colorado Legislative Council Staff Fiscal Note

STATE
REVISED FISCAL IMPACT

(replaces fiscal note dated November 15, 2010)

Drafting Number:	LLS 11-0002	**Date:**	November 17, 2010
Prime Sponsor(s):	Rep. Fanning Sen. Ulrich	**Bill Status:**	House Appropriations
		Fiscal Analyst:	Clare Pramuk (303-866-2677)

TITLE: CONCERNING CRIMES RELATED TO COPYING MUSIC RECORDINGS.

Fiscal Impact Summary	FY 2011-12	FY 2012-13
State Revenue Cash Funds - Fines Collection Cash Fund	less than $5,000	less than $5,000
State Transfers or Diversions Transfer from the General Fund to the Capital Construction Fund	($623,822)	($599,991)
State Expenditures Cash Funds - Capital Construction Fund Appropriation to the Corrections Expansion Reserve Fund	$623,822	$599,991
FTE Position Change		
Effective Date: July 1, 2011.		
Appropriation Summary for FY 2011-2012: See State Appropriations section of the fiscal note.		
Local Government Impact: None.		

Summary of Legislation

Under current law, it is a class 6 felony to transfer (copy) copyrighted sound recordings with the intention of selling the copies. **As amended by the House Judiciary Committee**, this bill lowers the violation to a class 1 misdemeanor if no sale is made. The bill increases the violation to a class 5 felony if a person receives monetary compensation for the transferred recording.

The bill also raises the penalty for the trafficking of unlawfully transferred articles from a class 3 misdemeanor to a class 4 felony. Finally, the penalty for dealing in unlawfully packaged recorded articles is raised from a class 1 misdemeanor to a class 3 felony. Changes in criminal penalties are shown in Table 1.

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Table 1. Changes in Criminal Penalties		
Violation	**Current Law**	**Under HB11-1501**
Transfer of a sound recording with intent to sell	Class 6 Felony 1-1.5 years imprisonment and 1 year mandatory parole and/or $1,000-$100,000 fine	Class 1 Misdemeanor 6-18 months in jail and/or $500-$5,000 fine
Sale of transferred recordings	Class 6 Felony 1-1.5 years imprisonment and 1 year mandatory parole and/or $1,000-$100,000 fine	Class 5 Felony 1-3 years imprisonment and 2 years mandatory parole and/or $1,000-$100,000 fine
Dealing in unlawfully packaged recorded articles	Class 1 Misdemeanor 6-18 months imprisonment and/or $500-$5,000 fine	Class 3 Felony 4-12 years imprisonment and 5 years mandatory parole and/or $3,000-$750,000 fine
Trafficking in unlawfully transferred articles	Class 3 Misdemeanor 0-6 months imprisonment and/or $50 - $750 fine	Class 4 Felony 2-6 years imprisonment and 3 years mandatory parole and/or $2,000-$500,000 fine

State Revenue

This bill is expected to increase revenue from fines by less than $5,000 per year beginning in FY 2011-12. Unless otherwise provided by law, the fines are to be deposited in the Fines Collection Cash Fund for annual appropriations to cover associated administrative and personnel costs. All unexpended balances of the cash fund revert to the state General Fund at the end of each fiscal year. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to the cash fund and the General Fund cannot be determined but are estimated to be less than $5,000 per year.

State Transfers or Diversions

Pursuant to the requirements of Section 2-2-703, C.R.S., and Section 17-1-116, C.R.S., this bill transfers $623,822 from the General Fund to the Capital Construction Fund in FY 2011-12 and $599,991 in FY 2012-13, then appropriates the money to the Corrections Expansion Reserve Fund. As a result, these amounts will not be available for General Fund appropriations. For a further explanation of this transfer and appropriation, see the section related to the five-year impact on correctional facilities.

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State Expenditures

Expenditures are expected to increase by $623,822 in FY 2011-12 and $799,940 in FY 2012-13 for the Department of Corrections. The fiscal note assumes that 10 individuals will be convicted of felonies under HB11-1501. Of these, 8 will be sentenced under new felony offenses, and 2 will receive longer sentences than under current law. Cash fund expenditures will increase to build additional beds to house the additional offenders by $623,822 in FY 2011-12 and $599,991 in FY 2012-13 from the Corrections Expansion Reserve Fund. General Fund expenditures will increase beginning in FY 2012-13 by $199,949 for prison operating costs when the first offenders convicted under the new law enter correctional facilities. The 5-year fiscal impact is explained below.

Five-Year Fiscal Impact on Correctional Facilities

Section 2-2-703, C.R.S., specifies that no bill can be passed by the General Assembly which results in a net increase in periods of imprisonment in ***state correctional*** facilities unless it contains an appropriation of money sufficient to cover the increased capital construction costs and operating costs in each of the first 5 fiscal years of the bill. Sections 17-1-102, 104.9, and 105.5, C.R.S., authorize the department to permanently place inmates classified as medium custody and below in private contract prisons. Inmates classified higher than medium custody cannot be placed in private contract prisons, except under "correctional emergency" conditions. ***The fiscal note assumes that the new inmates identified in this bill will be allocated between state correctional facilities and private contract prisons according to historical patterns.***

If an inmate is placed in a state correctional facility, the additional construction costs are estimated to be $125,165 per inmate bed. Operating costs are $88.60 per bed per day or $32,339 per bed per year. It should be noted that the construction costs reflect the funding needed to construct inmate beds in the fiscal year prior to when additional offenders are expected to enter the system. This lag accounts for the estimated time for criminal filing, trial, disposition, and sentencing. If an inmate is placed in a private contract prison, the state incurs no additional capital construction costs; however, the state pays a rate of $61.19 per bed per day for inmates placed in private prisons. The total cost to the department is therefore $22,334 per private prison bed per year.

Departmental data indicates that 30 percent of classes 3 through 5 felonies are housed in private prisons, and both the construction and operating costs presented in Table 3 have been prorated accordingly. The table also shows the increase in inmates expected as a result of the increased penalties in this bill.

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Table 3. Five-Year Fiscal Impact On Correctional Facilities					
Fiscal Year	**Inmate Bed Impact Construction**	**Construction Cost**	**Inmate Bed Impact Operating**	**Operating Cost**	**Total Cost**
FY 2011-12		$623,822			$623,822
FY 2012-13	6.00	599,991	6.00	199,949	799,940
FY 2013-14	9.48	494,712	15.48	392,018	886,730
FY 2014-15	7.84	255,837	23.32	549,368	805,205
FY 2015-16	4.00	255,837	27.32	630,009	885,846
Total		**$2,230,199**		**$1,771,344**	**$4,001,543**

State Appropriations

For FY 2011-12 the Department of Corrections requires an appropriation of $623,822 from the Corrections Expansion Reserve Fund.

Departments Contacted

Corrections Judicial Law