

## HB13-1501

Colorado Legislative Council Staff Fiscal Note

## STATE and LOCAL FISCAL IMPACT

**Drafting Number:** LLS 13-0002  
**Prime Sponsor(s):** Rep. Fanning  
 Sen. Ulrich

**Date:** December 11, 2012  
**Bill Status:** House Econ and Bus Dev  
**Fiscal Analyst:** Clare Pramuk (303-866-2677)

**TITLE:** CONCERNING CRIMES RELATED TO COPYING MUSIC RECORDINGS.

Fiscal Impact Summary	FY 2013-14	FY 2014-15
<b>State Revenue</b>		
Cash Funds - Fines Collection Cash Fund - Misdemeanors	up to \$2,500,000	up to \$2,500,000
Cash Funds - Fines Collection Cash Fund - Felonies	less than 5,000	less than 5,000
<b>State Transfers or Diversions</b>		
Transfer from the General Fund to the Capital Construction Fund	(\$742,979 )	(\$695,912)
<b>State Expenditures</b>		
General Fund	\$694,629	\$804,3491
Cash Funds - Capital Construction Fund Appropriation to the Corrections Expansion Reserve Fund	742,979	695,912
<b>FTE Position Change</b>	10.0 FTE	10.0 FTE
<b>Effective Date:</b> July 1, 2013.		
<b>Appropriation Summary for FY 2013-2014:</b> See State Appropriations section of the fiscal note.		
<b>Local Government Impact:</b> See Local Government section.		

### 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. This bill changes "sounds" to "music" and raises the penalty for a violation to a class 5 felony. It also expands the definition of unlawful transfer to include any unauthorized copying of a music recording that is provided to another person, regardless of whether a sale occurs and makes this a class 1 misdemeanor.

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.

Table 1. Changes in Criminal Penalties		
Violation	Current Law	Under HB13-1501
Any transfer of a music recording	N/A	Class 1 Misdemeanor 6-18 months in jail and/or \$500-\$5,000 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
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

### State Revenue

This bill is expected to increase revenue from fines by up to \$2,505,000 per year beginning in FY 2013-14. 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 specific impact to the cash fund and the General Fund cannot be determined.

***Fine Revenue - Misdemeanors.*** According to Section 18-1.3-501, C.R.S., the penalty for a class 1 misdemeanor can include, a fine of \$500 to \$5,000. The fiscal note assumes 5,000 new misdemeanor cases will be brought with a fine of \$500 levied per person. The actual amount will depend upon the actions taken at the local level to prosecute violations.

***Fine Revenue - Felonies.*** Per Section 18-1.3-401 (III) (A), C.R.S., the fine penalty for felonies addressed in this bill are as follows:

- Class 3 - \$3,000 to \$750,000
- Class 4 - \$2,000 to \$500,000
- Class 5 - \$1,000 to \$100,000

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 \$742,979 from the General Fund to the Capital Construction Fund in FY 2013-14 and \$695,912 in FY 2014-15, 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.

**State Expenditures**

**Expenditures are expected to increase by \$1,437,608 and 10 FTE in FY 2013-14 and \$1,500,253 and 10 FTE in FY 2014-15.** These costs are for the Judicial Branch and the Department of Corrections as shown in Table 2 and explained below.

**Judicial Branch.** General Fund expenditures for the Judicial Branch are expected to increase by \$694,629 and 10 FTE in FY 2013-14 and \$564,989 and 10 FTE in FY 2014-15. An estimated 5,000 new misdemeanor cases will be filed as a result of this bill, which will impact the branch, and the workload of the state's trial courts. To accommodate the workload within existing statutory deadlines, the branch will hire 10 additional FTE to process, adjudicate, and administer the increased caseload. Staffing will include 2 magistrates and 8 support staff.

<b>Table 2. Expenditures Under HB13-1501</b>		
<b>Cost Components</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>
<b>Judicial Branch</b>		
Personal Services	\$545,989	\$545,989
FTE	10.0	10.0
Operating Expenses and Capital Outlay	148,640	19,000
Subtotal	\$694,629	\$564,989
<b>Department of Corrections*</b>		
Construction Cost	\$742,979	\$695,912
Operating Expenses		239,352
Subtotal	\$742,979	\$935,264
<b>TOTAL</b>	<b>\$1,437,608</b>	<b>\$1,500,253</b>

*\*See Table 3 for 5-Year Fiscal Impact*

This bill is also expected to increase the caseload for the Division of Probation Services, however offenders are likely to be considered low risk and any impact to the division will be minimal.

**Department of Corrections.** The fiscal note assumes that 12 individuals will be convicted of felonies under HB13-1501. Of these, 8 will be sentenced under new felony offenses, and 4 will receive longer sentences than under current law. Cash fund expenditures will increase to build additional beds to house the additional offenders by \$742,979 in FY 2013-14 and \$695,912 in FY 2014-15 from the Corrections Expansion Reserve Fund. The 5-year fiscal impact is explained below. General Fund expenditures will increase beginning in FY 2014-15 for prison operating costs when the first offenders convicted under the new law enter correctional facilities.

### 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.

<b>Fiscal Year</b>	<b>Inmate Bed Impact Construction</b>	<b>Construction Cost</b>	<b>Inmate Bed Impact Operating</b>	<b>Operating Cost</b>	<b>Total Cost</b>
<b>FY 2013-14</b>		\$742,979			\$742,979
<b>FY 2014-15</b>	8.00	695,912	8.00	239,352	935,264
<b>FY 2015-16</b>	11.09	494,712	19.10	463,140	957,852
<b>FY 2016-17</b>	7.84	255,837	26.90	620,490	876,327
<b>FY 2017-18</b>	4.00	255,837	30.90	701,131	956,968
<b>Total</b>		<b>\$2,445,277</b>		<b>\$2,024,113</b>	<b>\$4,469,390</b>

**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 4.

<b>Table 4. Expenditures Not Included Under HB13-1501**</b>		
<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$78,430	\$78,430
Supplemental Employee Retirement Payments	21,620	21,620
<b>TOTAL</b>	<b>\$100,050</b>	<b>\$100,050</b>

\*\*More information is available at: <http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536133924>

**Local Government Impact**

The penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. The penalty for a class 3 misdemeanor is 0 to 6 months imprisonment in a county jail, a fine of \$50 to \$750, 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 not create the need for additional county jail space.

In addition, local district attorneys may incur additional costs if they choose to pursue a court order to destroy the recorded materials or distribute the confiscated equipment to a charitable or educational organization.

**State Appropriations**

For FY 2013-14:

- the Department of Corrections requires an appropriation of \$742,979 from the Corrections Expansion Reserve Fund; and
- the Judicial Branch requires a General Fund appropriation of \$694,629 and 10.0 FTE.

**Departments Contacted**

Corrections

Judicial

Law