



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

**FINAL
FISCAL NOTE**

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|-------------------------|---|------------------------|---|
| Drafting Number: | LLS 18-0096 | Date: | July 23, 2018 |
| Prime Sponsors: | Rep. Liston; Valdez Sen. Garcia; Scott | Bill Status: | Signed into Law |
| | | Fiscal Analyst: | Aaron Carpenter 303-866-4918 Aaron.Carpenter@state.co.us |

Bill Topic: PENALTY FOR BURGLARY OF FIREARMS

Summary of Fiscal Impact:

| | |
|---|--|
| <input checked="" type="checkbox"/> State Revenue | <input type="checkbox"/> TABOR Refund |
| <input checked="" type="checkbox"/> State Expenditure | <input checked="" type="checkbox"/> Local Government |
| <input type="checkbox"/> State Transfer | <input type="checkbox"/> Statutory Public Entity |

This bill makes second degree burglary with the objective of stealing firearms a class 3 felony and increases the minimum fine that can be imposed to \$5,000. The bill increases state revenue and expenditures, and local expenditures and workload, on an ongoing basis.

Appropriation Summary: This bill requires and includes a five-year appropriation of \$1.4 million to the Department of Corrections.

Fiscal Note Status: This fiscal note reflects the enacted bill.

**Table 1
State Fiscal Impacts Under HB18-1077**

| | | FY 2018-19 | FY 2019-20 | FY 2020-21 |
|---------------------|--------------|------------------|------------------|------------------|
| Revenue | Cash Funds | at least \$5,000 | at least \$5,000 | at least \$5,000 |
| Expenditures | General Fund | - | - | \$69,856 |
| Transfers | | - | - | - |

Summary of Legislation

This bill enhances the sentence for second degree burglary from a class 4 felony to a class 3 felony if the objective of the burglary is the theft of one or more firearms or ammunition. The bill allows the courts to impose a fine of \$5,000 to \$750,000 for an individual convicted of second degree burglary with the objective of stealing a firearm or ammunition.

Comparable Crime

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. This bill changes the element of an existing crime by making burglary of a firearm or ammunition a class 3 felony. From January 2015 to January 2018, 4,043 people were sentenced for committing second degree burglary. Of that number, 3,524 were male, 517 were female, and 2 where gender was not identified. Demographically, 3,053 were Caucasian, 599 were African American, 306 were Hispanic, 39 were Asian, 21 were American Indian, 23 were other, and 2 where race was not identified. Under current law, second degree burglary is a class 4 felony unless the burglary was of a dwelling or the objective was to steal a controlled substance lawfully kept within a building, then it is a class 3 felony. For informational purposes, of the 4,043 people sentenced for committing second degree burglary, 1,112 were charged with a class 3 felony. The Bureau of Alcohol, Tobacco, Firearms and Explosives reported that in 2016, there were 237 guns stolen in Colorado. According to the U.S. Attorney's Office, there were 12 individuals charged with stealing a firearm or ammunition in Colorado, in 2017. Based on this and information provided by the Colorado District Attorney's Council, the fiscal note estimates that in one year, there are 18 cases of second degree burglary with the objective of stealing a firearm or ammunition that would be a class 3 felony under this bill.

Assumption

The fiscal note assumes that although the bill takes effect upon the signature of the Governor, no impact will occur in the first year due to the amount of time required for criminal filing, trial, disposition and sentencing of each case. If impacts arise in the first year, this analysis assumes the Department of Corrections (DOC) will request any required appropriations through the annual budget process.

State Revenue

Beginning in FY 2018-19, this bill is anticipated to increase state revenue by at least \$5,000 per year.

Criminal fines. The bill is anticipated to increase state revenue by at least \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The bill makes the fine penalty for a class 3 felony offense, with the objective of stealing a firearm or ammunition, \$5,000 to \$750,000. Under current law, second degree burglary with the objective of stealing a firearm or ammunition is a class 4 felony with a fine ranging between \$2,000 to \$500,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined, but is expected to be at least \$5,000 because of the number of cases and the increase in minimum fine.

TABOR Refund

This bill increases state revenue from criminal fines and court fees, which will increase the amount of money required to be refunded under TABOR for FY 2018-19 and FY 2019-20. A TABOR refund obligation is not expected for the current FY 2017-18. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount. State revenue subject to TABOR is not estimated for years beyond FY 2019-20.

State Expenditures

Beginning in FY 2018-19, this bill increases workload and state expenditures in the Judicial Department and agencies that provide representation to indigent persons, including the Office of the State Public Defender and the Office of the Alternate Defense Counsel. It is also expected to increase state General Fund expenditures in the DOC, as discussed below.

Judicial Department. From January 2016 to January 2018, trial courts saw about 8,000 cases filed with at least one charge of second degree burglary. The bill is not expected to increase the amount of second degree burglary cases but may see an increase of workload from an increase of litigation due to the higher charge. Probation costs may also increase to the extent that individuals sentenced to probation will be on it for a longer period. Any cost or workload increases can be accomplished within existing appropriations.

Agencies providing representation to indigent persons. Workload and costs for the Office of the State Public Defender and the Office of the Alternate Defense Counsel (ADC) may increase under the bill. More serious charges increase case length, case costs, and are more likely to go to trial. To the extent this occurs, this analysis assumes the affected offices will request an increase in appropriations through the annual budget process. For informational purposes, the average cost to the ADC for a felony 4 case is \$1,320 and the average cost for a felony 3 case is \$2,414.

Department of Corrections. This bill increases prison bed and parole costs for the DOC by \$1.4 million for a five-year period with impacts beginning in FY 2020-21, as discussed below.

Prison beds. This bill is anticipated to increase state General Fund expenditures for the DOC by an estimated \$1.4 million for a five-year period with impacts beginning in FY 2020-21. This increase assumes at least 18 offenders will be sentenced to prison for a class 3 felony every year and have an average length of stay of 74.9 months instead of 33.9 months for a class 4 felony. Table 2 shows the estimated cost of the bill over the next five fiscal years.

Table 2
Prison Costs Under HB 18-1077

| | Inmate Bed Impact | Operating Cost |
|-------------------|--------------------------|-----------------------|
| FY 2018-19 | 0 | \$0 |
| FY 2019-20 | 0 | \$0 |
| FY 2020-21 | 3.17 | \$69,856 |
| FY 2021-22 | 21.17 | \$467,144 |
| FY 2022-23 | 39.17 | \$864,432 |
| Total Cost | 63.51 | \$1,401,432 |

Parole. Once an offender is released from prison, he or she is assigned to parole. Because class 3 felonies have an average of imprisonment of 74.9 months, parole costs are assumed to occur outside of the five years period the fiscal note is estimating. Parole costs the DOC an average of \$13.03 per day, per person. An individual convicted of a class 4 felony spends, on average, 26.1 months on parole, while an individual convicted of a class 3 felony spends 41.9 months. For additional information about costs in fiscal notes for bills affecting the Department of Corrections, please visit: leg.colorado.gov/fiscalnotes.

Local Government Impact

The bill will increase workload and expenditures for district attorneys. As noted above for the state, raising the felony class for second degree burglaries with the objective of stealing a firearm or ammunition is expected to increase litigation.

Effective Date

The bill was signed into law by the Governor and took effect on June 6, 2018.

State Appropriations

The bill requires and includes a five-year appropriations of \$1,401,432 General Fund to the Department of Corrections, as shown in Table 2, above.

State and Local Government Contacts

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|------------------------|----------|--------------------|
| Corrections | Counties | District Attorneys |
| Information Technology | Judicial | Municipalities |
| Natural Resources | Sheriffs | Public Safety |