



**Legislative
Council Staff**

Nonpartisan Services for Colorado's Legislature

**FINAL
FISCAL NOTE**

Drafting Number:	LLS 18-0637	Date:	July 24, 2018
Prime Sponsors:	Rep. Lundeen; Garnett Sen. Coram; Fields	Bill Status:	Signed into Law
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Bill Topic: CYBERCRIME CHANGES

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" 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 replaces the term computer crime with cybercrime in the criminal code, adds three new cybercrimes, adds definitions, and modifies the circumstances and classification of some such crimes. This bill increases state and local government revenue, expenditures, and workload on an ongoing basis.

Appropriation Summary: This bill requires a five-year prison bed appropriation of \$135,418 to the Department of Corrections.

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

**Table 1
State Fiscal Impacts Under HB 18-1200**

		FY 2018-19	FY 2019-20
Revenue	General Fund and Cash Funds	less than \$5,000	less than \$5,000
Expenditures	General Fund	-	\$22,072
Transfers		-	-
TABOR Refund	General Fund	less than \$5,000	less than \$5,000

Summary of Legislation

This bill replaces the term computer crime with cybercrime in the criminal code, adds definitions, and modifies the circumstances and classification of some such crimes.

Cybercrime criminal charges. Under current law, cybercrimes are generally classified as a class 2 misdemeanor; however, such crimes may be a petty offense up to a class 2 felony depending on the circumstances of the crime as determined by the amount lost, damaged, or stolen. This bill eliminates the petty offense and makes any cybercrime where the amount lost, stolen, or damaged by the crime is less than \$300, a class 3 misdemeanor.

Class 5 felony cybercrimes. This bill also adds the following new crimes to the list of cybercrimes and classifies them as a class 5 felony:

- soliciting, arranging, or offering to arrange a situation in which a minor may engage in prostitution using a computer, computer network, or computer system;
- using a scanning device to read, obtain, memorize, or store information on a payment card for any period of time without authorization and with intent to defraud the authorized user, issuer of the card, or a merchant; and
- using an encoding machine to place payment card information on another payment card with intent to defraud the authorized user, issuer of the card, or a merchant.

Under this bill and current law, these cybercrimes could be classified as up to a class 2 felony depending on the circumstances of the crime.

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 an existing crime that creates a new factual basis for the offense. This bill adds new cybercrimes and changes the classification of some existing cybercrimes.

Computer crimes. Over the past three years, there have been 141 computer crime convictions (89 Male, 52 Female; 96 Caucasian, 26 African American, 15 Hispanic, 3 Other, and 1 Asian). Of this number:

- 86 convictions were felonies because of the amount of loss or damage resulting from the crime;
- 2 convictions were felonies because the offender had a previous felony conviction; and
- 53 convictions were for misdemeanors, of which 3 were for a lost, damaged, or stolen amount between \$50 and \$300.

Luring or sexual exploitation of a child. Over the last three years, there have been 141 convictions for the luring or sexual exploitation of a child (138 Male, 3 Female; 122 Caucasian, 9 Hispanic, 6 African American, 2 Indian, 2 Other).

Possession of identify theft tools. Also during the last three years, there were 36 convictions for possession of identity theft tools (17 Male, 19 Female; 27 Caucasian, 4 Hispanic, 3 African American, and 2 Other).

Assumptions

The following assumptions used were used in this analysis.

General Assumptions. The fiscal note assumes that:

- most current felony cybercrime convictions (86 convictions since 2015) will be convicted under the same felony classification under this bill. This is because the amount lost, damaged, or stolen as a result of the cybercrime determines the classification up to a class 2 felony both under the bill and current law; and
- most current misdemeanor cybercrime convictions (53 convictions since 2015) will be convicted under the same misdemeanor classification under the bill because of the amount lost, damaged, or stolen. This includes 3 convictions where the amount lost, damaged, or stolen was between \$50 and \$300.

DOC impact assumption. This analysis assumes one offender will be sentenced to DOC per year for a class 5 felony as a result of the new cybercrimes created by this bill.

State Revenue

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

Criminal fines. The bill is anticipated to increase state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. Under current law, the fine penalty for a class 5 felony offense is \$1,000 to \$100,000 and fine revenue will increase from one new class 5 felony cybercrime offense per year. However, because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. This fiscal note assumes that any revenue generated is likely to be less than \$5,000.

Court and administrative fees. The bill will also increase state fee revenue credited to the General Fund and to various cash funds. Fees are imposed for a variety of court-related costs, which vary based on the offense but may include probation supervision, drug or sex offender surcharges, victim compensation, and late fees, among others. Some fee revenue is shared with local governments; refer to the Local Government Impact section for additional information.

TABOR Refund

This bill increases state revenue from criminal fines and fees, which will increase the amount of money required to be refunded under TABOR for FY 2018-19 and FY 2019-20. 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 state General Fund expenditures for the Judicial Department and the Department of Corrections. Workload and costs are also increased for the Office of the State Public Defender, the Office of the Alternate Defense Counsel, and the Office of the Child's Representative. These impacts are shown in Tables 2 and 3 and discussed below.

Judicial Department. The bill is anticipated to increase trial court workload to hear new cybercrime cases. Also under this bill cybercrimes that previously could have been tried as a petty offense will instead be a class 3 misdemeanor which may increase trial length for those trials. To the extent that new offenders are sentenced to probation or existing petty offenders are sentenced to a longer probation term for class 3 misdemeanor cybercrimes, costs and workload to provide supervision will increase. Overall, trial court and probation workload is expected to increase by a minimal amount and it is assumed that this can be accomplished within existing appropriations.

Agencies providing representation to indigent persons. Overall, workload and costs for the Office of the State Public Defender and the Office of the Alternate Defense Counsel will increase under the bill to represent indigent offenders and potentially as a result of longer trials. To the extent this occurs, this analysis assumes the affected offices will request an increase in appropriations through the annual budget process.

Office of the Child's Representative. By adding the crime of soliciting, arranging, or offering to arrange a situation in which a minor may engage in prostitution using a computer, computer network, or computer system to the list of cybercrimes, this bill potentially increases workload for the Office of the Child's Representative by increasing the trial length for such crimes. Because most related cases involving a minor are charged under other criminal classifications, such as the sexual exploitation of a minor, this impact is assumed to be minimal and can be accomplished within existing appropriations.

Department of Corrections. This bill increases prison bed and parole costs for the DOC by at least \$135,418 between FY 2018-19 and FY 2022-23.

Prison beds. This bill is anticipated to increase state General Fund expenditures for the DOC by an estimated \$22,072 in FY 2019-20 and \$32,077 in FY 2020-21 and thereafter. This increase assumes one offender will be sentenced to prison per year for a class 5 felony and have an average length of stay of 17.4 months. This fiscal note assumes 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 DOC will request any required appropriations through the annual budget process. Table 2 shows the estimated cost of the bill over the next five fiscal years.

**Table 2
 Prison Costs Under HB 18-1200**

	Inmate Bed Impact	Operating Cost
FY 2018-19	-	-
FY 2019-20	1.0	\$22,072
FY 2020-21	1.5	\$32,077
FY 2021-22	1.5	\$32,077
FY 2022-23	1.5	\$32,077
Total Cost		\$118,304

Parole. Once an offender is released from prison, he or she is assigned to parole. Table 3 shows the estimated impact on parole over the next five fiscal years assuming 18.3 months of parole, per offender beginning in FY 2020-21.

**Table 3
Parole Costs Under HB 18-1200**

	Annualized Parole Impact	Annualized Operating Cost
FY 2018-19	-	-
FY 2019-20	-	-
FY 2020-21	0.5	\$2,600
FY 2021-22	1.5	\$7,257
FY 2022-23	1.5	\$7,257
Total Cost		\$17,114

For additional information about costs in fiscal notes for bills affecting the Department of Corrections, please visit: leg.colorado.gov/fiscalnotes.

Local Government

Overall, this bill is expected to increase local government revenue, workload, and costs as described below. The exact impact to a particular local government will vary depending on the number of misdemeanor cybercrime offenses committed within its jurisdiction.

County jails. To the extent that eliminating offenses for petty cybercrimes and replacing them with a class 3 misdemeanor classification results in more misdemeanor offenders being sentenced to jail or to a longer term in jail county jail costs will increase. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. Estimated costs to house an offender in a county jail vary from \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.39 to house state inmates.

District attorneys. The bill increases workload and costs for district attorneys to prosecute any new offenses under the bill and to the extent that this bill increases cybercrime trial length. These impacts have not been estimated.

Denver County Court. To the extent that eliminating offenses for petty cybercrimes and replacing them with a class 3 misdemeanor classification increase trial length, this bill will increase criminal fine and court fee revenue, expenditures, and workload for Denver County Court, managed and funded by the City and County of Denver. Probation services in the Denver County Courts may also experience a minimal increase in workload and revenue to supervise persons convicted to a longer term under the bill within Denver County. These impacts have not been estimated, but are assumed to be minimal.

Effective Date

This bill was signed into law by the Governor on June 6, 2018, and takes effect August 8, 2018, assuming no referendum petition is filed.

State Appropriations

This bill requires a General Fund appropriation for the five-year DOC prison bed impact identified in Table 2. The total DOC five-year appropriation required is \$135,418.

State and Local Government Contacts

Corrections
Judicial

District Attorneys
Public Safety

Information Technology