



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

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Prime Sponsors:	Rep. Lundeen; Garnett Sen. Coram; Fields	Bill Status:	House Judiciary
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Bill Topic: CYBERCRIME CHANGES

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 replaces the term computer crime with cybercrime in the criminal code, adds three new cybercrimes, adds definitions, and modifies the circumstances and classification of 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 appropriation of \$354,911 to the Department of Corrections.

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

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

		FY 2018-19	FY 2019-20
Revenue	General Fund and Cash Funds	at least \$5,000	at least \$5,000
Expenditures	General Fund	-	\$66,215
Transfers		-	-

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 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 class 2 and class 3 misdemeanor cybercrime classifications available under current law. Under the bill, cybercrimes are generally classified as a class 1 misdemeanor up to a class 2 felony depending on the circumstance of the crime. Cybercrimes committed by a person previously convicted of a felony are classified as a class 5 felony, rather than a class 6 felony as under current law.

Class 5 felony cybercrimes. This bill increases penalties for the following existing cybercrimes and classifies them as a class 5 felony, rather than a class 2 misdemeanor:

- obtaining money, passwords, property, services, or other information by false or fraudulent pretenses;
- committing theft; or
- altering, damaging, interrupting, or impairing the functioning of any computer, network, or system.

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 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.

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 identify 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 cybercrimes are captured under current law; however, under this bill cybercrimes currently classified as a class 2 misdemeanor, approximately 12 per year, will become class 1 misdemeanors because of the increased penalty;
- 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
- under current law, an offender charged with a cybercrime that has a previous felony conviction such as theft or sexual exploitation of a child is typically sentenced either concurrently or consecutively according to the highest charge. These impacts are beyond the five year period of this analysis.

DOC impacts. This analysis assumes three offenders will be sentenced to DOC per year for the following reasons:

- the addition of new cybercrimes to the criminal code will result in at least one new class 5 felony conviction per year;
- at least one cybercrime currently classified as a class 2 misdemeanor will become a class 5 felony under this bill per year as the highest charge;
- there will be one cybercrime class 5 felony conviction per year from an offender with a previous felony conviction (2 convictions since 2015). Under current law, this is a class 6 felony and offenders may not be sentenced to DOC. By making this a class 5 felony, a DOC sentence is more likely.

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. Under current law, the fine penalty for a class 2 misdemeanor offense is \$250 to \$1,000; the fine penalty for a

class 1 misdemeanor is \$500 to \$5,000; and the fine penalty for a class 5 felony offense is \$1,000 to \$100,000. Fine revenue may increase from current class 2 misdemeanors becoming class 1 misdemeanors, at least one new class 5 felony cybercrime offense, at least one misdemeanor offense under current law becoming a felony, and one previous class 6 felony being a class 5 felony under this bill. 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 at least \$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

The bill increases state General Fund and cash fund revenue from criminal fines and court fees subject to TABOR by at least \$5,000 in FY 2018-19 and FY 2019-20. State revenue is not currently expected to exceed the TABOR limit in either year and no refund is required. Therefore, the bill is not expected to impact TABOR refunds in these years. However, refunds in future years when the state next collects a TABOR surplus will be increased.

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. Workload further increases to the extent that changes to the classification of cybercrimes increases the length of cybercrime trials and to the extent that misdemeanor cybercrime cases tried in Denver County Court are now tried as felonies in Denver District Court, which is part of the state court system. Alternatively, by creating more severe cybercrime penalties, this bill may increase the number of plea bargains which will reduce trial court workload. To the extent that new offenders are sentenced to probation, 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. Should additional appropriations be needed, the Judicial Department will request them through the annual budget process.

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 \$406,251 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 \$66,215 in FY 2019-20 and \$96,232 in FY 2020-21 and thereafter. This increase assumes 3 offenders will be sentenced to prison per year for a class 5 felony and have an average length of stay of 17.4 months per offender. One of these offenders will be sentenced for a new class 5 felony cybercrime, one offender will be sentenced to DOC for a cybercrime that was previously a misdemeanor, and one will be sentenced for a felony 5 cybercrime because of a prior felony conviction that was previously a class 6 felony without a DOC sentence. 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	3.0	\$66,215
FY 2020-21	4.4	\$96,232
FY 2021-22	4.4	\$96,232
FY 2022-23	4.4	\$96,232
Total Cost	-	\$354,911

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	1.6	\$7,800
FY 2021-22	4.6	\$21,770
FY 2022-23	4.6	\$21,770
Total Cost		\$51,340

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.

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. To the extent that more severe cybercrime penalties increases the number of plea bargains workload will decrease. These impacts have not been estimated.

County jails. This bill increases county jail costs to the extent that an offender convicted of a cybercrime misdemeanor is sentenced to a longer term in county jail. Under current law, a court may sentence an offender to jail for a period of between 0 and 6 months (class 3 misdemeanor) and between 3 and 12 months (class 2 misdemeanor), depending on the circumstances of the cybercrime. Under this bill, these offenders may be sentenced for a period of 6 to 18 months (class 1 misdemeanor). 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.

To the extent that offenders currently convicted of misdemeanor cybercrimes and sentenced to county jail are instead convicted of felony cybercrimes and sentenced to DOC, county jail costs will decrease. This analysis assumes at least one class 2 misdemeanor cybercrime sentence will become a class 5 felony per year because of the increase penalty. This will decrease county jail costs from \$53 to \$114 per day, which would result in savings per offender of between \$4,770 (3 months, \$53 per day) and \$41,610 (12 months, \$114 per day).

Denver County Court. The bill increases criminal fine and court fee revenue, expenditures, and workload for Denver County Court, managed and funded by the City and County of Denver. The court will hear cases currently classified as a petty offense, class 3 or class 2 misdemeanor cybercrime as class 1 cybercrime cases under this bill. Probation services in the Denver County Courts may also experience a minimal increase in workload and revenue to supervise persons convicted under the bill within Denver County. These impacts have not been estimated.

To the extent that current misdemeanor cybercrime cases are instead tried as felony cases, court and probation revenue and workload will decrease because these cases would be tried in Denver District Court which is part of the state court system. Workload will further decrease to the extent that increased cybercrime penalties lead to more plea bargains. These impacts have not been estimated.

Effective Date

The bill takes effect August 8, 2018, if the General Assembly adjourns on May 9, 2018, as scheduled, and 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 \$354,911.

State and Local Government Contacts

Corrections
Judicial

District Attorneys
Public Safety

Information Technology