



## Legislative Council Staff

*Nonpartisan Services for Colorado's Legislature*

# FISCAL NOTE

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<b>Drafting Number:</b>	LLS 18-0554	<b>Date:</b>	February 20, 2018
<b>Prime Sponsors:</b>	Sen. Coram Rep. Herod	<b>Bill Status:</b>	Senate Judiciary
		<b>Fiscal Analyst:</b>	Chris Creighton   303-866-5834 Chris.Creighton@state.co.us

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**Bill Topic:** CHANGE MAX CRIMINAL PENALTY ONE YEAR TO 364 DAYS

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**Summary of Fiscal Impact:**

<input checked="" type="checkbox"/> State Revenue ( <i>minimal, potential</i> )	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure ( <i>minimal, potential</i> )	<input checked="" type="checkbox"/> Local Government ( <i>potential</i> )
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill changes the maximum sentence for certain misdemeanor offenses from 12 months to 364 days, which potentially decreases county jail costs on an ongoing basis. This bill may also decrease state and local government revenue, expenditures, and workload on an ongoing basis.

**Appropriation Summary:** No appropriation is required.

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

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### Summary of Legislation

This bill changes the maximum sentence for class 2 misdemeanors, class 2 drug misdemeanors, misdemeanors without a fixed statutory penalty, and municipal ordinance violations from one year to 364 days.

### Background and Assumptions

Conviction and demographic data on the number of class 2 misdemeanors, class 2 drug misdemeanors, misdemeanors without a fixed statutory penalty, and municipal ordinance convictions violations was not able to be compiled for this fiscal note. For informational purposes, class 2 misdemeanor data for unlawful use of a controlled substance and disorderly conduct was analyzed. Since 2015, there have been 132 class 2 misdemeanor convictions for unlawful use of a controlled substance (71 male, 61 female; 114 Caucasian, 15 Hispanic, and 3 African American). Since 2015, there have been 200 class 2 misdemeanor convictions for disorderly conduct (187 male, 13 female; 172 Caucasian, 15 African American, 7 Hispanic, 3 Asian, 2 unknown, 1 Indian).

Convictions of one-year trigger a federal immigration action for offenders with immigrant status and under certain circumstances, a county jail may be asked to hold an immigrant until they are transferred into U.S. Immigration and Customs Enforcement (ICE) custody. While this bill is not anticipated to impact the number of misdemeanor cases or convictions it is assumed that the

number of plea bargains will increase by an unknown amount, because under current law defendants are more likely to challenge class 2 misdemeanor charges in court to avoid the one-year penalty and the federal immigration action.

### **State Revenue**

Beginning in FY 2018-19, this bill may impact state revenue as discussed below. Overall, this fiscal note expects revenue to decrease by a minimal amount.

**Criminal fines.** The bill may increase or decrease state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a class 2 misdemeanor offense is \$250 to \$1,000. To the extent that more defendants accept plea bargains rather than proceed to trial because of the reduced sentence and ability to avoid an immigration action, the amount of fine revenue collected may increase or decrease. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue has not been determined.

**Court and administrative fees.** To the extent that defendants accept plea bargains instead of proceeding to trial, this bill may decrease state fee revenue from court and administrative fees credited to the General Fund and 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 potentially decreases state revenue subject to TABOR by a minimal amount 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 reduced.

### **State Expenditures**

Beginning in FY 2018-19, to the extent that decreasing the maximum penalty for a misdemeanor 2 to less than one-year increases the number of plea bargains, trial court workload in the Judicial Department will decrease. Workload and costs to represent indigent defendants for the Office of the State Public Defender and the Office of the Alternate Defense Counsel may also decrease. Any workload decrease resulting from this bill is expected to be minimal and will not require a decrease in appropriations for any Judicial Department agency.

### **Local Government**

Overall, this bill may decrease local government revenue, workload, and costs as described below. The exact impact to a particular local government will vary depending on the number of class 2 misdemeanor or municipal ordinance offenses committed within its jurisdiction, the immigration status of the offenders, and the number of plea bargains.

**County Jail.** Under current law, a court may sentence an offender to county jail for a maximum of 12 months for a class 2 misdemeanor, class 2 drug misdemeanors, misdemeanors without a fixed statutory penalty, and municipal ordinance violations for a maximum of 12 months. Beginning in FY 2018-19, and continuing each year thereafter, by reducing the maximum sentence by one day this bill potentially reduces county jail expenditures and the amount received from state reimbursements. However; because the courts have the discretion of incarceration up to the maximum sentence 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 this bill reduces county jail sentences because of plea bargains or the number of defendants ordered to be held in county jail until they placed in ICE custody, county jail costs will further decrease.

**Denver County Court.** Similar to the state, criminal fines and court administrative revenue and workload in Denver County Court may decrease to the extent that more defendants accept plea bargains instead of proceeding to trial. These impacts have not been estimated.

**Municipal court.** Municipal fines, court administrative revenue, and workload may decrease to the extent that municipal ordinance offenders accept plea bargains instead of proceeding to trial. These impacts have not been estimated.

**District Attorneys.** To the extent that this bill results in fewer trials because of the acceptance of a plea bargain, district attorney workload will decrease. This impact has 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 and Local Government Contacts**

Counties	District Attorneys	Judicial
Municipalities	Public Safety	Sheriffs