



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

HB 19-1148

FISCAL NOTE

Drafting Number: LLS 19-0094 Date: February 8, 2019
Prime Sponsors: Rep. Herod Bill Status: House Judiciary
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Bill Topic: CHANGE MAX CRIMINAL PENALTY ONE YEAR TO 364 DAYS

- Summary of Fiscal Impact: State Revenue (minimal), State Expenditure (minimal), State Transfer, TABOR Refund, Local Government (minimal), Statutory Public Entity

This bill changes the maximum sentence for certain misdemeanor offenses from 12 months to 364 days, which potentially decreases county jail revenue and costs on an ongoing basis.

Appropriation Summary: No appropriation is required.

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

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

In 2018, 5,819 individuals were convicted of class 2 misdemeanors and 157 individuals were convicted of level 2 drug misdemeanors. Demographic data is available upon request. Conviction data on the number of misdemeanors without a fixed statutory penalty and municipal ordinance violations were not able to be compiled for this fiscal note.

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 misdemeanor charges in court to avoid a potential one-year sentence and the federal immigration action. Overall, such impacts are expected to be minimal.

State Revenue

Beginning in FY 2019-20, 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 a minimal amount, 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. The precise impact to state revenue has not been determined because the courts have the discretion of incarceration, imposing a fine, or both and because the terms of future plea bargain agreements are unknown.

Court and administrative fees. To the extent that defendants accept plea bargains instead of proceeding to trial, this bill will 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.

State Expenditures

Beginning in FY 2019-20, to the extent that reducing 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.

TABOR refunds. The bill may minimally increase or decrease state General Fund obligations for TABOR refunds in FY2019-20. Under current law and the December 2018 Legislative Council Staff forecast, the bill will correspondingly increase or reduce the amount refunded to taxpayers via sales tax returns for tax year 2020. The state is not expected to collect a TABOR surplus in FY 2020-21.

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 2019-20, 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. Based on a 2018 Joint Budget Committee Staff county jail survey, the average cost to house an

offender in a county jail is \$98.83 per day, but varies significantly from \$43.65 to \$350.21 per day depending on the county. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.93.

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 2, 2019, if the General Assembly adjourns on May 3, 2019, as scheduled, and no referendum petition is filed.

State and Local Government Contacts

Counties
Judicial

District Attorneys
Municipalities

Information Technology
Sheriffs