

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 11-0185
Prime Sponsor(s): Rep. Ferrandino; Kerr J.

Date: January 28, 2011
Bill Status: House Judiciary
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TITLE: CONCERNING GRAFFITI.

Fiscal Impact Summary	FY 2011-2012	FY 2012-2013
State Revenue Cash Funds Fines Collection Cash Fund	less than \$5,000	less than \$5,000
State Expenditures General Fund	See State Expenditures section	
FTE Position Change		
Effective Date: August 10, 2011, if the General Assembly adjourns on May 11, 2011, as scheduled, and no referendum petition is filed..		
Appropriation Summary for FY 2011-2012: None required.		
Local Government Impact: Minimal		

Summary of Legislation

Under current law, defacing property is a class 2 misdemeanor. A second or subsequent offense is a class 1 misdemeanor. This bill makes the following changes:

- the damage from two or more offenses within 18 months may be aggregated and charged into a single count;
- committing two or more offenses within an 18-month period where the aggregated damage amount is between \$500 and \$1,000 is a class 1 misdemeanor;
- committing two or more offenses within a three-year period where the aggregated damage amount is between \$1,000 and \$20,000 is a class 4 felony; and
- committing two or more offenses within a three-year period where the aggregated damage amount is more than \$20,000 is a class 3 felony.

Additionally, the Colorado Department of Transportation (CDOT) is authorized to enter into memoranda of understanding (MOUs) with cities, counties, cities and counties, or other municipalities to allow such local government entities to remove graffiti as needed from property owned by CDOT. These MOUs are required to state that if a local government entity chooses to remove graffiti from CDOT property, the local government must do so at its own expense.

State Revenue

According to state law, the fine penalties for the offenses created by the bill range from \$500 to \$750,000. Unless otherwise provided by law, the fines are to be deposited in the state Fines Collection Cash Fund for annual appropriations to cover associated administrative and personnel costs in the Judicial Branch. All unexpended balances of the cash fund revert to the General Fund at the end of each fiscal year. Because the courts have the discretion of imposing incarceration, a fine, or both, the impact to the cash fund and the General Fund cannot be determined.

State Expenditures

This bill is likely to increase costs for a number of departments. The exact amount of the increase cannot be quantified because it is not possible to predict: how many new felony cases will be filed by district attorneys; how many of those defendants will be indigent; how many cases of indigent defendants will present a conflict for the public defenders; and, ultimately, how judges will choose to sentence those individuals found guilty.

Department of Human Services (DHS). The Division of Youth Corrections in the DHS is not expected to see an increase in the number of juveniles sentenced to detention. Historically, graffiti is a crime that has been handled through restorative justice and other diversion programs. This bill is not expected to change that practice. In cases where juveniles are sentenced to detention with DYC, graffiti is not expected to be the most serious charge.

Judicial Branch. The number of felony court cases filed may increase, while the number of misdemeanor cases may decrease. The net difference between the fiscal impact of the new felony and juvenile delinquency cases and the reduction in costs from fewer misdemeanor cases is expected to be small enough to be absorbed within existing resources. Additionally, the probation departments would need to see an additional 16 juveniles or adults sentenced to probation in order to require additional resources.

Office of the State Public Defender (OSPD). The OSPD provides legal defense for indigent individuals accused of crimes. It takes more time and resources to defend a felony case than a misdemeanor case. While the exact fiscal impact to the OSPD cannot be determined, it is important to note that the office will require 1 new FTE for every 8 cases (of indigent defendants) raised from a class 2 misdemeanor to a class 4 felony.

Office of the Alternate Defense Counsel (OADC). The OADC provides a similar function to the OSPD. The OADC takes the cases of indigent defendants where the OSPD has a conflict. The average cost to defend a misdemeanor case is \$708. The average cost to defend a class 4 felony is \$1,534 and it is \$2,437 to defend a class 3 felony.

Department of Corrections (DOC). Graffiti offenders are not currently sentenced to the DOC because defacing property is a class 1 or class 2 misdemeanor. The bill makes serial offenders who meet a certain property damage threshold eligible for incarceration. However, the fiscal note assumes that, due to the youth of most offenders and the desire to keep these juveniles in the community to make restitution for the damage they cause, judges will not sentence anyone to a prison term.

Departmental Differences

It is the position of the DOC that the bill will result in one new class 4 felony conviction sentenced to the DOC's Youthful Offender System every five years. Department personnel believe that, due to the requirement that individuals commit multiple offenses to be charged at the felony level, the fiscal impact of the new offender will not be realized until at least three years after the effective date of the bill. The current cost of construction for new DOC beds is \$130,046 and the annual operating cost for the Youthful Offender System is \$62,824 per offender.

It does not seem plausible that judges will sentence young offenders to the DOC solely for damaging property. If juvenile offenders are sentenced to the DOC, it seems more likely that there will be a more serious offense combined with the graffiti charges. As such, the fiscal note does not show a bed impact in the department.

Local Government Impact

The penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. Because the courts have the discretion of imposing incarceration or a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$72 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails a daily rate of \$50.44 to house state inmates. It is assumed that the impact of any new misdemeanor convictions will be minimal and will not create the need for additional county jail space.

Departments Contacted

Corrections

Human Services

Judicial

Transportation