



Colorado Legislative Council Staff Fiscal Note
**STATE and LOCAL
 FISCAL IMPACT**

Drafting Number: LLS 12-0785

Date: February 21, 2012

Prime Sponsor(s): Rep. Barker

Bill Status: House Economic and Business Development

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TITLE: CONCERNING MEASURES TO PREVENT ORGANIZED RETAIL THEFT.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue Cash Funds Fines Collection Cash Fund	Minimal increase	
State Expenditures		
FTE Position Change		
Effective Date: Upon signature of the Governor, or upon becoming law without his signature.		
Appropriation Summary for FY 2012-2013: None required.		
Local Government Impact: See Local Government Impact Section.		

Summary of Legislation

Under current law, disorderly conduct is a class 2 misdemeanor, a class 3 misdemeanor, or a class 1 petty offense, depending on the activities involved. A person commits the offense of disorderly conduct if he or she intentionally, knowingly, or recklessly:

- makes a coarse and obviously offensive utterance, gesture, or display in a public place and the utterance, gesture, or display tends to incite an immediate breach of the peace (class 1 petty offense, or class 2 misdemeanor if the offense interferes with a funeral or causes emotional distress at a funeral);
- makes unreasonable noise in a public place or near a private residence that he or she does not have a right to occupy (class 1 petty offense, or class 2 misdemeanor if the offense interferes with a funeral or causes emotional distress at a funeral);
- fights in a public place (class 3 misdemeanor);
- discharges a firearm in a public place, if the person is not a peace officer and is not engaged in lawful target practice or hunting (class 2 misdemeanor); or
- displays a deadly weapon, displays any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon, or represents verbally or otherwise that he or she is armed with a deadly weapon in a public place in a manner calculated to cause harm, provided that the person is not a peace officer (class 2 misdemeanor).

This bill adds activating, deactivating, or causing a fire alarm or an exit alarm to sound or preventing a fire alarm from sounding to the list of offenses classified as disorderly conduct. The bill states that such actions would be classified as a class 2 misdemeanor.

In addition, the bill specifies that the definition of "theft detection deactivating device" includes jumper wires, wire cutters, and electronic article surveillance removal devices, and that the definition of "theft detection shielding device" includes foil-lined or otherwise modified clothing, bags, purses, or containers used for avoiding detection devices. Under current law, it is a class 1 misdemeanor for any person to:

- knowingly manufacture, distribute, or sell a theft detection deactivating or shielding device with the knowledge that some person intends to use the device to commit theft;
- possess a theft detection deactivation or shielding device with the intent to use it, or with the knowledge that some person intends to use it, to commit theft; or
- knowingly and without authorization deactivate or remove a theft detection device or any component of one prior to purchasing something in a store.

State Revenue

The bill may increase state revenue from fines, although the effect is expected to be minimal and less than \$5,000 in new state revenue is expected per year. Individuals who activate, deactivate, or cause a fire alarm or an exit alarm to sound or who prevent a fire alarm from sounding can likely already be charged under current statutes, including Section 18-8-111, C.R.S., concerning false reporting to authorities (a class 3 misdemeanor), and Section 18-4-506, C.R.S., concerning second degree criminal tampering (a class 2 misdemeanor).

According to Section 18-1.3-501, C.R.S., the penalty for a class 3 misdemeanor is 0 to 6 months in a county jail, a fine of \$50 to \$750, or both. The penalty for a class 2 misdemeanor is 3 to 12 months in a county jail, a fine of \$250 to \$1,000, or both. Therefore, to the extent that persons charged under the new act of disorderly conduct were previously charged with a class 3 misdemeanor, they would be subject to higher fines. Fine revenue that is not otherwise appropriated is deposited into the Fines Collection Cash Fund. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to state revenue cannot be determined.

State Expenditures

This bill is not expected have any impact on the courts. According to the Judicial Branch and the Office of the State Public Defender, the new acts added to disorderly conduct can likely already be charged under existing statutes. The new definitions of theft detection deactivating and shielding devices are not expected to result in increased charges.

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., 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 the existing crime that creates a new factual basis for the offense. In these cases, the fiscal note is to include 1) a description of the elements of the new crime, or a description of the changes to an existing crime, 2) an analysis of whether the new crime, or changes to an existing crime, may be charged under current law, 3) a comparison of the proposed crime classification to similar types of offenses, and 4) an analysis of the current and future anticipated prevalence of the behavior that the proposed new crime, or changes to an existing crime, intends to address.

This bill changes the elements of two existing crimes. A description of the new elements was summarized on pages 1 and 2 of the fiscal note. Section 2 of this bill targets individuals who activate, deactivate, or cause a fire alarm or an exit alarm to sound or who prevent a fire alarm from sounding. As stated in the state revenue section on page 2, such individuals are already likely to be charged under the statutes concerning false reporting and tampering. The bill also adds examples to the definitions of "theft detection deactivating device" and "theft detection shielding device." The current definitions for both terms include any tool, instrument, mechanism, or other article adapted, designed, engineered, used, or operated to inactivate, incapacitate, remove, or avoid a theft detection or shielding device. Therefore, the bill is not expected to result in increased charges concerning such devices.

Table 2 estimates how the bill will affect the number of charges over a two year period for related crimes. This estimate assumes that charges for false reporting and criminal tampering concerning fire alarms represent a small percentage of charges currently filed under those statutes. Under this estimate, there will be approximately 100 cases that were formerly charged as a class 3 misdemeanor of false reporting that will be charged as class 2 misdemeanor disorderly conduct under the bill. There will be approximately 50 cases that were formerly charged as second degree criminal tampering that will now be charged as disorderly conduct, but both offenses are class 2 misdemeanors.

Table 2. Estimated Difference in Charges Under HB 12-1304			
Offense	Charges from 2009 through 2010	Estimated Two-year Increase or Decrease in Charges Pursuant to HB12-1304	Estimated Number of Charges for 2013 and 2014 under HB12-1304
False Reporting (Class 3 M)	5,242	(100)	5,142
Theft Detection Devices - Unlawful Acts (Class 1 M)	60	0	60
2nd Degree Criminal Tampering (Class 2 M)	783	(50)	733
Disorderly Conduct (Class 2 M)	287	150	437

Local Government Impact

The penalty for a class 3 misdemeanor is 0 to 6 months in a county jail, a fine of \$50 to \$750, or both. The penalty for a class 2 misdemeanor is 3 to 12 months in a county jail, a fine of \$250 to \$1,000, or both. Therefore, to the extent that persons charged under the new act of disorderly conduct were previously charged with a class 3 misdemeanor, they will now be subject to a possible sentence that is 3 to 6 months longer. Because the courts have the discretion of incarceration or imposing 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 \$65 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 this bill will be minimal and will not create a need for additional county jail space.

Departments Contacted

Colorado Counties, Inc.
Judicial
Office of the State Public Defender
Public Safety

District Attorneys
Law
Office of the Alternate Defense Counsel
Sheriffs