

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

**Drafting Number:** LLS 12-0604

**Date:** January 27, 2012

**Prime Sponsor(s):** Rep. Barker

**Bill Status:** House Judiciary

**Fiscal Analyst:** Kerry White (303-866-3469)

**TITLE:** CONCERNING THE CULPABLE MENTAL STATE FOR IDENTITY THEFT.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
<b>State Revenue</b>		
Cash Funds		
Fines Collection Cash Fund	<\$5,000	<\$5,000
<b>State Expenditures</b>		
General Fund	at least \$20,706	at least \$20,706
<b>FTE Position Change</b>		
<b>Effective Date:</b> August 7, 2012, if the General Assembly adjourns on May 9, 2012, as scheduled, and no referendum petition is filed.		
<b>Appropriation Summary for FY 2012-2013:</b> See State Appropriations section.		
<b>Local Government Impact:</b> None.		

**Summary of Legislation**

This bill clarifies statutory language describing the criminal offense of identity theft. To commit identity theft, an individual need not be aware that the personal identifying information, financial identifying information, or financial device belongs to another person.

**Background**

On October 25, 2010, the Colorado Supreme Court issued an opinion in the case of *Montes-Rodriguez v. People*, in which the court determined that an individual must know that he or she is using another person's personal identifying information, financial identifying information, or a financial device to be guilty of criminal impersonation. Prior to this ruling, district attorneys were prosecuting criminal impersonation and identity theft cases based on the assumption that the defendant did not need to be aware that he or she was using identifying information that belonged to a different person. House Bill 12-1101 aligns state law with district attorney practices prior to October 25, 2010.

According to the Judicial Branch, the number of case filings following the court's ruling has not changed appreciably. In addition, the Department of Corrections reported that the number of admissions for identity theft increased by two offenders from a total of 163 in FY 2009-10 to 165 in FY 2010-11, following the court's ruling.

### **State Revenue**

This bill may increase state revenue in the Judicial Branch by less than \$5,000 per year. Under current law, the fine for a class 4 felony is \$2,000 to \$500,000. 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. All unexpended balances of the cash fund revert to the state General Fund at the end of each fiscal year. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to the cash fund and the General Fund cannot be determined.

### **State Expenditures**

**This bill will increase state General Fund expenditures in the Department of Corrections (DOC) by at least \$20,706 in FY 2012-13 and \$20,706 FY 2013-14.** While case filings have not changed appreciably following the court's ruling, this analysis assumes that other factors, such as an increase in identity theft behavior, may account for the steady rate of filings post-October 2010. Accordingly, this analysis assumes that by removing the requirement that an individual be aware that he or she is using another person's personal or financial information or financial device, the bill has the potential to increase the number of filings for identity theft. Depending on the outcome of any new cases, this analysis assumes that at least one additional person will be sentenced to prison every five years.

### **Five-Year Fiscal Impact on Correctional Facilities**

Current law prohibits the General Assembly from passing any bill to increase periods of imprisonment in state correctional facilities without appropriating an amount sufficient to cover the increased capital construction and operating costs of the bill in each of the first five fiscal years. However, current law also allows the DOC to place offenders classified as medium custody and below in private contract prisons, for which no state capital construction costs are incurred.

Offenders sentenced under this bill to DOC may be placed in either a state-run or a private contract prison, depending on several factors. As state-run facilities are currently at or near capacity, any such offenders that *must* be housed in a state-run prison will likely require a shift of other inmates in that facility to private contract prisons. Therefore, *this fiscal note assumes that the impact of this bill will be accommodated through the use of private contract prisons, and that no new capital construction funds are necessary.*

Offenders placed in a private contract prison cost the state about \$56.73 per offender per day, including the current daily rate of \$52.69 and an estimated \$4.04 per offender per day for medical care provided by the DOC. Table 1 shows the estimated cost of the bill over the next five fiscal years.

<b>Table 1 Five-Year Fiscal Impact On Correctional Facilities</b>				
<b>Fiscal Year</b>	<b>Inmate Bed Impact</b>	<b>Construction Cost</b>	<b>Operating Cost</b>	<b>Total Cost</b>
<b>FY 2012-13</b>	1.0	\$0	\$20,706	\$20,706
<b>FY 2013-14</b>	1.0	\$0	\$20,706	\$20,706
<b>FY 2014-15</b>	0.99	\$0	\$20,499	\$20,499
<b>FY 2015-16</b>	0.0	\$0	\$0	\$0
<b>FY 2016-17</b>	0.0	\$0	\$0	\$0
<b>Total</b>		\$0	\$61,912	\$61,912

*Judicial department.* Overall, the fiscal impact of the bill to the Judicial Branch is expected to be minimal and any increased workload will be managed within existing appropriations.

**State Appropriations**

For FY 2012-13, the Department of Corrections requires a General Fund appropriation of \$20,706.

**Departments Contacted**

Corrections                      Judicial