

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 13-0830
Prime Sponsor(s): Sen. Guzman
 Rep. Kagan

Date: March 27, 2013
Bill Status: Senate Judiciary
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TITLE: CONCERNING CHANGES TO STATUTORY PROVISIONS RELATED TO CRIMINAL PROCEEDINGS.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015
State Revenue		
General Fund	Potential increase.	Potential increase.
Cash Funds		
Fines Collection Cash Fund	<\$5,000	<\$5,000
State Expenditures	See State Expenditures section.	
FTE Position Change		
Effective Date: The bill takes effect on July 1, 2013, except section 5 applies to offenses committed prior to July 1, 2013.		
Appropriation Summary for FY 2013-2014: None required.		
Local Government Impact: See Local Government Impact section.		

Note: While all agencies were canvassed for the purposes of the fiscal note, not all agencies responded with complete information. Therefore, this fiscal note should be considered preliminary. It will be revised if new information becomes available.

Summary of Legislation

This bill addresses several areas of law governing criminal offenses and court proceedings.

Regarding juvenile offenses, the bill:

- clarifies that when a person was convicted of a sex offense, he or she is eligible to petition to be removed from the sex offender registry if he or she was a juvenile at the time the crime was committed and certain conditions are met;
- creates a new class 3 misdemeanor for a juvenile who leaves custody after turning 18 in a staff secure facility as an alternative to the class 3 felony available under current law for leaving a state-operated locked facility;
- requires a juvenile who is subject to a direct file or transfer be held in a county jail once he or she turns 18; and
- requires a mandatory ten-year parole supervision period for a juvenile convicted of any class 1 felony, rather than just murder in the first degree.

Regarding court proceedings, the bill:

- requires the probation department, at the request of the district attorney or defense, to provide a presentencing report at least seven days before a sentencing hearing, rather than the current three-day requirement;
- directs the court to grant the probation department an extension in the amount of time required to prepare a presentencing report if requested, and to reschedule a hearing so that it is held seven days after the report is made available;
- specifies that, if there is a stipulation to jail time accepted by the court or if the defendant is already serving a sentence in the Department of Corrections (DOC), a presentencing report is not required to include a sex offender evaluation, but one may be ordered by the court;
- clarifies that the time frames for applying for entry of conviction and imposition of sentence for a deferred prosecution also apply to juvenile deferred adjudications;
- requires the court to seal the record for a deferred disposition or multi-case disposition if the petition is sufficient on its face;
- clarifies that a person may petition to seal the records for a drug conviction only once every 12 months; and
- specifies that the Attorney General has concurrent jurisdiction with local district attorneys to prosecute persons for crimes related to air and water quality, hazardous waste and substances, and solid waste.

Regarding criminal offenses, the bill:

- amends the crime of first degree burglary to require the offender to have threatened the use of a deadly weapon, rather than only possess the weapon during the crime; and
- adds securities fraud to the list of crimes where the statute of limitations begins upon the discovery of the act, rather than when the act was committed.

Lastly, the bill contains other provisions affecting the criminal justice system, such as:

- requiring that an analysis of comparable crimes included in a bill's fiscal note include gender and ethnicity data;
- changing the definition of a felony complaint to require the prosecutor to sign and file the complaint with the court;
- modifying the definition of restitution to include medical costs provided for a victim as a result of the offender's conduct that were paid for by a government agency or insurer;
- allowing a district attorney to appoint one or more part-time deputy district attorneys, who do not practice criminal defense in the jurisdiction or are employed by the Colorado District Attorneys Council, to fulfill the duties of the district attorney without county commissioner approval; and
- removing a requirement that a part-time district attorney be paid by the county he or she serves, and allows this cost to be shared among the counties within the judicial district.

State Revenue

Overall, this bill is anticipated to increase state revenue by less than \$5,000 per year. The bill may increase fine penalties in certain cases and reduce fine penalties in other cases, as discussed below. However, because courts have the discretion of incarceration or imposing a fine, the actual impact to the Fines Collection Cash Fund in the Judicial Branch cannot be determined. In addition, the bill allows for certain medical costs to be included in an order of restitution, which may increase state revenue credited to the General Fund as reimbursements.

Reductions for juvenile offenders. Under current law, the penalty for an offender (of any age) leaving a state-operated locked facility is a class 3 felony. Under the bill, a juvenile who leaves custody after turning 18 in a staff secure facility would be charged with a class 3 misdemeanor. As of this writing, only one juvenile has been identified with a conviction of leaving a staff secure facility in recent years. The fine penalty for a class 3 felony ranges from \$3,000 to \$750,000. The fine penalty for a class 3 misdemeanor ranges from \$50 to \$750. Given the low number of offenses, the impact of this provision is anticipated to be negligible.

Reductions for burglary offenses. The bill raises the standard for a charge of first degree burglary to require the offender to have threatened the use of a deadly weapon, rather than only have possessed the weapon during the crime. This may have the effect of requiring certain offenses to be charged as second degree burglary rather than first degree burglary, and could reduce the associated fine penalties. The crime of first degree burglary is a class 3 felony, except if the property is a controlled substance within a pharmacy, in which case it is a class 2 felony. The crime of second degree burglary is a class 4 felony, except if the property is a controlled substance or within a dwelling, in which case it is a class 3 felony. The fine penalty for a class 3 felony is \$3,000 to \$750,000, whereas the fine penalty for a class 4 felony is \$2,000 to \$500,000. The fiscal note assumes the impact of this provision on state revenue is minimal.

Increases for securities fraud. The bill changes the statute of limitations for securities fraud offenses to begin at the time the act is discovered rather than when the crime occurred. This may increase the number of cases prosecuted and the amount of fine penalties collected. Depending on the offense, securities fraud crimes are either a class 6 or class 3 felony. The fine penalty for a class 6 felony ranges from \$1,000 to \$100,000 and the fine penalty for a class 3 felony ranges from \$3,000 to \$750,000. Given the financial nature of these crimes, this analysis assumes that the increase in fine penalty revenue will be minimal, but that it will exceed the amount of reductions discussed above.

Increases for reimbursements of medical costs. The bill modifies the definition of restitution to include medical costs provided for a victim as a result of the offender's conduct that were paid for by a government agency or insurer. To the extent these costs were paid by the Departments of Health Care Policy and Financing or Human Services, state revenue will increase. As the bill is silent on the treatment of any such recoveries, the fiscal note assumes any moneys received will be credited to the General Fund.

State Expenditures

The bill increases workload and costs in some areas and decreases workload and costs in other areas, as discussed below. As of this writing, the overall impact of the bill has not been determined.

Judicial Branch. The bill both increases and decreases workload and costs for the Judicial Branch. However, the bill is anticipated to not require an adjustment in appropriations.

Increases in workload. The bill allows certain persons to petition to be removed from the sex offender registry if the crime was committed while the person was a juvenile. This provision is anticipated to increase workload by a minimal amount. The bill also reduces the amount of time available to prepare presentence investigation (PSI) reports within the courts by four days, which will either result in an increase in court time needed to hear requests for an extension or a minimal increase in staff to prepare PSI reports within the new timeframes. The bill requires that gender and ethnicity data be included in certain fiscal notes, resulting in a minimal workload increase for Judicial Branch staff to provide this information to Legislative Council Staff. By modifying the date from which the statute of limitations for securities fraud crimes begins, additional case filings are anticipated, which will increase court workload by a minimal amount.

Decreases in workload. In certain circumstances, the bill will no longer require a sex offender evaluation to be included in a PSI report, which will reduce workload. This reduction is anticipated to offset the increase in workload to prepare PSI reports within the new time frames. The bill is also anticipated to reduce workload for the provisions of the bill that require the court to seal certain records if a petition is sufficient on its face and clarify that a person may petition to seal the records for a drug conviction only once every 12 months. To the extent that additional juveniles are prosecuted for leaving custody from a state secure facility, the change in criminal classification from a felony to a misdemeanor would reduce the amount of court time required to adjudicate cases. Due to the low number of known filings, this impact is negligible.

Legislative Council Staff. Under current law, bills that create a new crime, change the classification of an existing crime, or change an element of the existing crime that creates a new factual basis for the offense are required to include an analysis of comparable crime in the fiscal note. SB13-229 requires staff to include gender and ethnicity data in the comparable crime section of the fiscal note. This analysis assumes that the increase in workload associated with this provision is minimal and can be accomplished within existing appropriations.

Department of Corrections (DOC). The bill affects DOC in two ways: it modifies criminal penalties for certain offenses and changes parole requirements for certain juvenile offenders. As of this writing, no data about the number of offenders related to these provisions are available and, therefore, the impact on state expenditures has not been calculated.

Modifications in criminal penalties. By changing the classification of first degree burglary, the fiscal note assumes that some offenses will now be charged as second degree burglary instead. In most cases, this reduces the classification of the crime from a class 3 felony to a class 4 felony.

Based on 2012 commitments and assuming no other crimes are involved, the average length of stay (LOS) for a class 3 felony is 91.38 months. The average LOS for a class 4 felony is 44.41 months, which represents a reduction of 46.97 months. In addition, the period of mandatory parole is reduced from three years to two. However, this amount may be partially or fully offset by a change in the statute of limitations for securities fraud offenses. Under current law, the statute of limitations begins on the date the act was committed. Under SB13-229, the statute of limitations begins on the date the act was discovered, which may increase the number of offenders convicted of these crimes. Depending on the act, the penalty is a class 6 felony, which is punishable by one year to 18 months imprisonment, or a class 3 felony, which is punishable by 4 to 12 years imprisonment. Mandatory parole is five years for a class 3 felony and one year for a class 6 felony.

Parole requirements for certain juvenile offenders. The bill requires a mandatory 10 year parole supervision period for a juvenile convicted of any class 1 felony, rather than just murder in the first degree. Due to the assumption that this provision will affect a low number of cases, this increase is assumed to be minimal.

Department of Law. The bill specifies that the Attorney General has concurrent jurisdiction with local district attorneys to prosecute persons for crimes related to air and water quality, hazardous waste and substances, and solid waste. To the extent that the Attorney General chooses to prosecute offenses of this nature, workload and costs will increase. The fiscal note assumes that any such increases will be accomplished within existing appropriations or requested through the annual budget process.

Local Government Impact

This bill affects local governments in three areas: county jails, prosecution of offenses, and the hiring of part-time district attorneys.

County jails. The bill requires a juvenile who is subject to a direct file or transfer be held in a county jail once he or she turns 18. As this codifies existing practice, no change in costs is anticipated. The bill also creates a new class 3 misdemeanor for a juvenile that leaves custody after turning 18 in a staff secure facility. The sentence for a class 3 misdemeanor may include imprisonment in a county jail for up to six months. 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. Due to the low number of anticipated cases, it is assumed that the impact of this bill on county jails will be minimal.

Prosecutions. The bill provides for concurrent jurisdiction between district attorneys and the Attorney General for crimes related to air and water quality, hazardous waste and substances, and solid waste. To the extent that the Attorney General chooses to prosecute such crimes, costs for district attorneys could decrease. This amount has not been estimated. The bill also requires a district attorney to sign and file a criminal complaint rather than make it orally. The fiscal note assumes this provision will increase workload by a minimal amount.

Hiring. The bill allows a district attorney to hire part-time district attorneys without obtaining county commissioner approval and to allocate the costs of part-time district attorneys among the judicial district. The fiscal note assumes these provisions may create efficiencies for impacted counties.

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. SB13-229 creates a new class 3 misdemeanor for a juvenile who leaves custody after turning 18 in a staff secure facility. This offense may currently be charged as a class 3 felony. As of this writing, only one offender has been identified as a juvenile who left custody after turning 18 in a staff secure facility. This offender was charged with other crimes and, therefore, the impact of this change is anticipated to be minimal. The bill also changes the classification of first degree burglary by requiring the offender to have threatened the use of a deadly weapon, rather than only possess the weapon during the crime. This may have the effect of requiring certain offenses to be charged as second degree burglary instead, reducing the associated criminal penalties. As of this writing, no information about the number of offenses this change will apply to is available.

Departments Contacted

Corrections
Health Care Policy and Financing
Law
Sheriffs

Counties
Human Services
Local Affairs

District Attorneys
Judicial
Public Safety