



# REVISED FISCAL NOTE

(replaces fiscal note dated February 27, 2018)

**Drafting Number:** LLS 18-0637  
**Prime Sponsors:** Rep. Lundeen; Garnett  
Sen. Coram; Fields

**Date:** April 2, 2018  
**Bill Status:** House Appropriations  
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## **Bill Topic: CYBERCRIME CHANGES**

<b>Summary of Fiscal Impact:</b>	<input checked="" type="checkbox"/> State Revenue <input checked="" type="checkbox"/> State Expenditure <input type="checkbox"/> State Transfer	<input checked="" type="checkbox"/> TABOR Refund <input checked="" type="checkbox"/> Local Government <input type="checkbox"/> Statutory Public Entity
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This bill replaces the term computer crime with cybercrime in the criminal code, adds three new cybercrimes, adds definitions, and modifies the circumstances and classification of some such crimes. This bill increases state and local government revenue, expenditures, and workload on an ongoing basis.

**Appropriation Summary:** This bill requires a five-year prison bed appropriation of \$118,304 to the Department of Corrections.

**Fiscal Note Status:** This revised fiscal note reflects the introduced bill, as amended by the House Judiciary Committee.

**Table 1**  
**State Fiscal Impacts Under HB 18-1200**

		<b>FY 2018-19</b>	<b>FY 2019-20</b>
<b>Revenue</b>	General Fund and Cash Funds	less than \$5,000	less than \$5,000
<b>Expenditures</b>	General Fund	-	\$22,072
<b>Transfers</b>		-	-

## **Summary of Legislation**

This bill replaces the term computer crime with cybercrime in the criminal code, adds definitions, and modifies the circumstances and classification of some such crimes.

**Cybercrime criminal charges.** Under current law, cybercrimes are generally classified as a class 2 misdemeanor; however, such crimes may be a petty offense up to a class 2 felony depending on the circumstances of the crime as determined by the amount lost, damaged, or stolen. This bill eliminates the petty offense and makes any cybercrime where amount lost, stolen, or damaged by the crime is less than \$300, a class 3 misdemeanor.

**Class 5 felony cybercrimes.** This bill also adds the following new crimes to the list of cybercrimes and classifies them as a class 5 felony:

- soliciting, arranging, or offering to arrange a situation in which a minor may engage in prostitution using a computer, computer network, or computer system;
- using a scanning device to read, obtain, memorize, or store information on a payment card for any period of time without authorization and with intent to defraud the authorized user, issuer of the card, or a merchant; and
- using an encoding machine to place payment card information on another payment card with intent to defraud the authorized user, issuer of the card, or a merchant.

Under this bill and current law, these cybercrimes could be classified as up to a class 2 felony depending on the circumstances of the crime.

## **Comparable Crime**

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 an existing crime that creates a new factual basis for the offense. This bill adds new cybercrimes and changes the classification of some existing cybercrimes.

**Computer crimes.** Over the past three years, there have been 141 computer crime convictions (89 Male, 52 Female; 96 Caucasian, 26 African American, 15 Hispanic, 3 Other, and 1 Asian). Of this number:

- 86 convictions were felonies because of the amount of loss or damage resulting from the crime;
- 2 convictions were felonies because the offender had a previous felony conviction; and
- 53 convictions were for misdemeanors, of which 3 were for a lost, damaged, or stolen amount between \$50 and \$300.

**Luring or sexual exploitation of a child.** Over the last three years, there have been 141 convictions for the luring or sexual exploitation of a child (138 Male, 3 Female; 122 Caucasian, 9 Hispanic, 6 African American, 2 Indian, 2 Other).

**Possession of identify theft tools.** Also during the last three years, there were 36 convictions for possession of identity theft tools (17 Male, 19 Female; 27 Caucasian, 4 Hispanic, 3 African American, and 2 Other).

## **Assumptions**

The following assumptions used were used in this analysis.

**General Assumptions.** The fiscal note assumes that:

- most current felony cybercrime convictions (86 convictions since 2015) will be convicted under the same felony classification under this bill. This is because the amount lost, damaged, or stolen as a result of the cybercrime determines the classification up to a class 2 felony both under the bill and current law; and
- most current misdemeanor cybercrime convictions (53 convictions since 2015) will be convicted under the same misdemeanor classification under the bill because of the amount lost, damaged, or stolen. This includes 3 convictions where the amount lost, damaged, or stolen was between \$50 and \$300.

**DOC impact assumption.** This analysis assumes one offender will be sentenced to DOC per year for a class 5 felony as a result of the new cybercrimes created by this bill.

## **State Revenue**

Beginning in FY 2018-19, this bill is anticipated to increase state revenue by less than \$5,000 per year.

**Criminal fines.** The bill is anticipated to increase state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. Under current law, the fine penalty for a class 5 felony offense is \$1,000 to \$100,000 and fine revenue will increase from one new class 5 felony cybercrime offense per year. However, because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. This fiscal note assumes that any revenue generated is likely to be less than \$5,000.

**Court and administrative fees.** The bill will also increase state fee revenue credited to the General Fund and to 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.

## **TABOR Refund**

On net, this bill increases state General and cash fund revenue subject to TABOR, which will increase the amount of money required to be refunded under TABOR for FY 2018-19 and FY 2019-20.

For FY 2018-19 and FY 2019-20, the bill increases the TABOR refund obligation by less than \$5,000 while increasing General Fund revenue by at least \$5,000, resulting in a net decrease of less than \$5,000 in the amount available for the General Fund budget. State revenue subject to TABOR is not estimated for years beyond FY 2019-20.

## **State Expenditures**

Beginning in FY 2018-19, this bill increases state General Fund expenditures for the Judicial Department and the Department of Corrections. Workload and costs are also increased for the Office of the State Public Defender, the Office of the Alternate Defense Counsel, and the Office of the Child's Representative. These impacts are shown in Tables 2 and 3 and discussed below.

**Judicial Department.** The bill is anticipated to increase trial court workload to hear new cybercrime cases. Also under this bill cybercrimes that previously could have been tried as a petty offense will instead be a class 3 misdemeanor which may increase trial length for those cases. To the extent that new offenders are sentenced to probation or existing petty offense offenders are sentenced to a longer probation term for class 3 misdemeanor cybercrimes, costs and workload to provide supervision will increase. Overall, trial court and probation workload is expected to increase by a minimal amount and it is assumed that this can be accomplished within existing appropriations.

**Agencies providing representation to indigent persons.** Overall, workload and costs for the Office of the State Public Defender and the Office of the Alternate Defense Counsel will increase under the bill to represent indigent offenders and potentially as a result of longer trials. To the extent this occurs, this analysis assumes the affected offices will request an increase in appropriations through the annual budget process.

**Office of the Child's Representative.** By adding the crime of soliciting, arranging, or offering to arrange a situation in which a minor may engage in prostitution using a computer, computer network, or computer system to the list of cybercrimes, this bill potentially increases workload for the Office of the Child's Representative by increasing the trial length for such crimes. Because most related cases involving a minor are charged under other criminal classifications, such as the sexual exploitation of a minor, this impact is assumed to be minimal and can be accomplished within existing appropriations.

**Department of Corrections.** This bill increases prison bed and parole costs for the DOC by at least \$135,418 between FY 2018-19 and FY 2022-23.

**Prison beds.** This bill is anticipated to increase state General Fund expenditures for the DOC by an estimated \$22,072 in FY 2019-20 and \$32,077 in FY 2020-21 and thereafter. This increase assumes one offender will be sentenced to prison per year for a class 5 felony and have an average length of stay of 17.4 months per offender. This fiscal note assumes no impact will occur in the first year due to the amount of time required for criminal filing, trial, disposition and sentencing of each case. If impacts arise in the first year, this analysis assumes the DOC will request any required appropriations through the annual budget process. Table 2 shows the estimated cost of the bill over the next five fiscal years.

**Table 2**  
**Prison Costs Under HB 18-1200**

	<b>Inmate Bed Impact</b>	<b>Operating Cost</b>
FY 2018-19	-	-
FY 2019-20	1.0	\$22,072
FY 2020-21	1.5	\$32,077
FY 2021-22	1.5	\$32,077
FY 2022-23	1.5	\$32,077
<b>Total Cost</b>		<b>\$118,304</b>

**Parole.** Once an offender is released from prison, he or she is assigned to parole. Table 3 shows the estimated impact on parole over the next five fiscal years assuming 18.3 months of parole, per offender beginning in FY 2020-21.

**Table 3**  
**Parole Costs Under HB 18-1200**

	<b>Annualized Parole Impact</b>	<b>Annualized Operating Cost</b>
FY 2018-19	-	-
FY 2019-20	-	-
FY 2020-21	0.5	\$2,600
FY 2021-22	1.5	\$7,257
FY 2022-23	1.5	\$7,257
<b>Total Cost</b>		<b>\$17,114</b>

For additional information about costs in fiscal notes for bills affecting the Department of Corrections, please visit: [leg.colorado.gov/fiscalnotes](http://leg.colorado.gov/fiscalnotes).

## **Local Government**

Overall, this bill is expected to increase local government revenue, workload, and costs as described below. The exact impact to a particular local government will vary depending on the number of misdemeanor cybercrime offenses committed within its jurisdiction.

**District attorneys.** The bill increases workload and costs for district attorneys to prosecute any new offenses under the bill and to the extent that this bill increases cybercrime trial length. These impacts have not been estimated.

**Denver County Court.** To the extent that eliminating offenses for petty cybercrimes and replacing them with a class 3 misdemeanor classification increase trial length, this bill will increase criminal fine and court fee revenue, expenditures, and workload for Denver County Court, managed and funded by the City and County of Denver. Probation services in the Denver County Courts

may also experience a minimal increase in workload and revenue to supervise persons convicted to a longer term under the bill within Denver County. These impacts have not been estimated, but are assumed to be minimal.

**Effective Date**

The bill takes effect August 8, 2018, if the General Assembly adjourns on May 9, 2018, as scheduled, and no referendum petition is filed.

**State Appropriations**

This bill requires a General Fund appropriation for the five-year DOC prison bed impact identified in Table 2. The total DOC five-year appropriation required is \$118,304.

**State and Local Government Contacts**

Corrections  
Judicial

District Attorneys  
Public Safety

Information Technology