



**Colorado
Legislative
Council
Staff**

HB16-1190

FISCAL NOTE

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 16-0904

Date: February 12, 2016

Prime Sponsor(s): Rep. Dore

Bill Status: House SVMA

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

BILL TOPIC: EXCLUDE DETENTION FACILITIES FROM DEADLY FORCE LAW

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue		
State Expenditures	Potential increase.	
General Fund		
Appropriation Required: None.		
Future Year Impacts: Ongoing potential increase in state expenditures.		

Summary of Legislation

Under current law, use of force, including deadly force, may be justified when a person has made an unlawful entry into a dwelling. This bill clarifies that a dwelling does not include any place of habitation in a detention facility.

Background

Colorado's "Make My Day" law permits the occupant of a dwelling to use deadly physical force against another person who has unlawfully entered the dwelling if certain conditions are met. Occupants who use deadly physical force in this situation are immune from criminal prosecution and civil liability. The use of physical force may also be permitted in order to defend oneself or a third person from what is reasonably believed to be the use or imminent use of unlawful physical force. Deadly physical force may only be used in this situation if the person reasonably believes that a lesser degree of force is inadequate and:

- the individual reasonably believes that he or she or another person is in imminent danger of being killed or of receiving great bodily injury;
- the other person is using or reasonably appears about to use physical force against an occupant of a dwelling or business establishment while committing or attempting to commit burglary; or
- the other person is committing or reasonably appears about to commit kidnapping, robbery, or sexual assault.

Over the past several years, Colorado's "Make My Day" law has been used successfully as a defense in at least two separate cases involving the death of a prison inmate (Cleveland Flood) who entered the prison cell of two other occupants. In at least one additional case, according to media reports, prosecutors declined to file charges against two prison inmates in connection with inmate Cody Gray's death as a result of the court's decision in the Flood case.

State Expenditures

Beginning in FY 2016-17, this bill may increase workload and costs for the trial courts and agencies that provide representation to indigent defendants, as well as costs in the Department of Corrections (DOC). These increases are assumed to be minimal.

Judicial Department. To the extent that this bill causes more filings for incidents in correctional facilities involving the use of force, workload for trial courts will increase. As prison inmates are indigent, this analysis assumes workload and costs may also increase for the Office of the State Public Defender or Office of the Alternate Defense Counsel to provide legal representation to defendants. This analysis assumes that the majority of incidents are currently being prosecuted and as such, any increases are assumed to be minimal.

Department of Corrections. To the extent that this bill results in new filings and convictions, this analysis assumes that the prison sentences of affected inmates could increase. Because the timing of future offenses is unknown and this analysis assumes most cases are currently prosecuted, the fiscal note assumes the DOC can address any required future increases in appropriations through the annual budget process. For informational purposes, in FY 2016-17, offenders placed in prison cost the state about \$59.90 per offender per day, including the current daily rate of \$56.02 and an estimated \$3.88 per offender per day for medical care provided by the DOC.

Local Government Impact

To the extent that this bill results in additional court filings, workload and costs for district attorneys will increase. These costs are assumed to be minimal.

Effective Date

The bill takes effect August 10, 2016, if the General Assembly adjourns on May 11, 2016, as scheduled, and no referendum petition is filed.

State and Local Government Contacts

Corrections District Attorneys Information Technology Judicial