



**Colorado
Legislative
Council
Staff**

HB17-1159

FISCAL NOTE

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

Drafting Number: LLS 17-0368
Prime Sponsor(s): Rep. Becker J.

Date: February 8, 2017
Bill Status: House Judiciary
Fiscal Analyst: Amanda Hayden (303-866-4918)

BILL TOPIC: REMEDIES FOR FORCIBLE ENTRY AND DETAINER

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue	<u><\$5,000</u>	<u><\$5,000</u>
Cash Funds	<5,000	<5,000
State Expenditures	Minimal workload increase.	
TABOR Impact	<\$5,000	<\$5,000
Appropriation Required: None.		
Future Year Impacts: Ongoing increase in state cash fund revenue and workload.		

Summary of Legislation

This bill adds to the definition of "forcible detainer" the act of preventing an owner or person authorized by the owner from accessing or possessing his or her property by locking or changing the lock on the property. It allows plaintiffs alleging an act of forcible entry or detainer to seek a temporary, mandatory injunction ordering that the property be returned to them. The bill creates two new crimes: unlawful occupancy and unlawful reentry. A person commits unlawful occupancy if he or she forcibly enters an uninhabited or vacant dwelling knowing he or she is unauthorized to do so, with the intention of taking up residence or providing the dwelling as a residence for someone else. Unlawful occupancy is a class 1 misdemeanor. For a second or subsequent offense, the maximum fine is increased to \$25,000. A person commits unlawful reentry if, knowing that the owner recovered possession of the property in a civil action, he or she reenters the property without authorization or permission. Unlawful reentry is a class 1 misdemeanor, except that the maximum fine is increased to \$25,000.

Background and 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 the existing crime that creates a new factual basis for the offense. Unlawful occupancy and unlawful reentry are similar crimes to second degree criminal trespass on an enclosed or fenced property, a class 3 misdemeanor, the maximum penalty for which is 6 months in jail, a \$50 to

\$750 fine, or both. In the last three years, 1,404 individuals have been convicted of second degree criminal trespass on an enclosed or fenced property. Of those, 1,206 were Caucasian, 87 were African American, 66 were Hispanic, 13 were classified as other, 22 were Indian, 8 were Asian, and race data was unreported for 2 cases; 1,132 were male, 271 were female, and gender data was unreported for 1 case.

State Revenue

Beginning in FY 2017-18, this bill is anticipated to increase state cash fund revenue by less than \$5,000 per year. The fiscal note assumes that most cases of unlawful occupancy and unlawful reentry are being charged under current law as trespassing and that any increase in revenue will result from the higher penalty for these crimes.

Criminal fines. This 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. The fine penalty for a class 1 misdemeanor is \$500 to \$5,000; for second and subsequent offenses of unlawful occupancy and for a first conviction of unlawful reentry, the maximum fine penalty is \$25,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, based on the low number of criminal fines imposed in 2016, the fiscal note assumes that any revenue generated is likely to be less than \$5,000.

Court and administrative fees. This bill may also increase state fee revenue by a minimal amount, including the \$50 per offender per month probation supervision fee. Fees are imposed for a variety of court-related costs, which vary based on the offense and the type of court. Typical fees may include such items as drug or sex offender surcharges, genetic testing, victim compensation, late fees, and other administrative fees. Some fee revenue is shared with local governments; please refer to the Local Government Impact section for additional information.

TABOR Impact

This bill increases state cash fund revenue from fines and fees, which will increase the amount of money required to be refunded under TABOR for FY 2017-18 and FY 2018-19. TABOR refunds are paid out of the General Fund. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount.

State Expenditures

Beginning in FY 2017-18, this bill may increase workload in the Judicial Department for trial courts to hear any additional misdemeanor cases or for probation services to supervise any new offenders sentenced to probation. To the extent that defendants are deemed indigent and appointed counsel by the state, workload and costs may increase for the Office of the State Public Defender and the Office of the Alternate Defense Counsel. The fiscal note assumes that most cases are being charged under current law and that any increase in new cases will be minimal. No change in appropriations for any agency within the Judicial Department is required.

Local Government Impact

This bill will affect local governments in several ways, as discussed below.

Criminal fine revenue. This bill is anticipated to increase fine revenue in the City and County of Denver. The fine penalty for a class 1 misdemeanor is \$500 to \$5,000 and could be up to \$25,000 under this bill. The fiscal note assumes any increase will be minimal.

Court and administrative fees. Similar to the state, court and administrative fee revenue will increase. In the City and County of Denver, probation fee revenue is anticipated to increase by \$50 per month, per offender. Revenue is anticipated to increase by a minimal amount as a result of any court and administrative fees shared with the state.

District attorney workload and county jail expenditures. The bill may increase workload for district attorneys to prosecute any new misdemeanors under the bill. To the extent that this bill increases misdemeanor convictions and offenders are sentenced to jail, or if offenders are given longer sentences, costs will increase. Under current law, a court may sentence an offender to jail for a class 1 misdemeanor for a period of between 6 and 18 months. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. The cost to house an offender in county jails varies from about \$53 to \$114 per day. It is assumed that most offenders are being charged under current law and that the impact of this bill will be minimal.

Denver County expenditures. The bill may result in an increase in workload for the Denver County Court, managed and funded by the City and County of Denver, to try additional misdemeanor cases under the bill. Probation services in the Denver County Courts may also experience a minimal increase in workload to supervise persons convicted under the bill.

Effective Date

The bill takes effect September 1, 2017, if no referendum petition is filed. It applies to complaints filed and offenses committed on or after this date.

State and Local Government Contacts

Counties
Judicial

District Attorneys
Municipalities

Information Technology
Sheriffs