



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

Drafting Number:	LLS 18-0423	Date:	January 18, 2018
Prime Sponsors:	Sen. Gardner; Hill Rep. Williams D.; Liston	Bill Status:	Senate Judiciary
		Fiscal Analyst:	Kerry White 303-866-3469 Kerry.White@state.co.us

Bill Topic: PROTECTING HOMEOWNERS AND DEPLOYED MILITARY

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue (<i>minimal</i>)	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure (<i>minimal</i>)	<input checked="" type="checkbox"/> Local Government (<i>minimal</i>)
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill creates an alternate process to remove an unauthorized person (occupant) from a residential property and associated civil and criminal penalties for certain prohibited behavior. The bill may both increase and decrease revenue and workload by a minimal amount for the Judicial Department and local governments on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This fiscal note reflects the introduced bill.

Summary of Legislation

This bill creates an alternate process to remove an unauthorized person (occupant) from a residential property. The owner or his or her authorized agent (declarant) must provide to law enforcement a declaration that provides certain information in order to request that law enforcement remove the trespasser.

Delivery of notice. Within 24 hours of receiving the declaration, a peace officer must remove the occupant from the premises, with or without an arrest, and order the occupant to remain off the premises or be subject to arrest for criminal trespass. The peace officer must provide the occupant with a reasonable opportunity to provide credible evidence showing that the occupant is a tenant, legal occupant, or the guest or invitee of the tenant or legal occupant.

Property damage. If the declaration includes a statement that the property has been altered or damaged or the peace officer sees evidence of such, he or she is required to collect personal information from the occupant and provide that information to the declarant.

Arrests. Arrests may only occur if a peace officer has probable cause to believe that the occupant has committed criminal trespass.

Liability. The bill exempts peace officers and law enforcement agencies for liability for actions or omissions made in good faith. A declarant who provides false information in the declaration may be subject to a private cause of action by the occupant and liable to the occupant for actual damages, attorney fees, and costs.

Criminal penalties. A declarant who provides false information in the declaration may be prosecuted for perjury in the first or second degree, or false swearing. An occupant who is removed from a residential property under the process created by this bill and who commits unauthorized alteration or damage may be prosecuted for the new crime of unauthorized alteration or damage of a residential property, which is a class 1 misdemeanor.

Comparable Crime and Assumptions

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. Under current law, a person who is illegally occupying property can be charged with criminal trespass in the first, second, or third degree. In situations where there is a question about the legality of an occupant, civil eviction proceedings may occur in lieu of criminal prosecution. Perjury and false swearing are also crimes under current law. If a person has caused damage to residential property, he or she may be charged with criminal mischief. Depending on the value of the damage, the penalty for this crime can be up to a class 3 felony. As of this writing, the number of eviction cases related to unauthorized occupants not addressed through the criminal process is unknown. It is also unknown how many persons could be subject to the new crime of unauthorized alteration or damage of a residential property and how that may impact criminal mischief filings.

Criminal trespass. Over the past three calendar years, there were 7,401 convictions of criminal trespassing, ranging from petty offenses to class 4 felonies. The gender data for these offenders included 6,046 males, 1,351 females, and 4 unclassified. The racial data for these offenders included 6,234 Caucasian, 599 African Americans, 391 Hispanic, 71 other, 57 Indian and 49 Asian. The number of offenders convicted of criminal trespass under conditions similar to this bill is unknown.

Perjury and false swearing. Over the past three calendar years, there were 156 convictions of perjury or false swearing, ranging from petty offenses to class 4 felonies. The gender data for these offenders included 87 males and 69 females. The racial data for these offenders included 3 Asian, 10 African Americans, 1 Hispanic, 1 Indian, 1 other, and 140 Caucasian. The number of offenders convicted of perjury or false swearing for cases with conditions similar to this bill is unknown.

Assumptions. The fiscal note assumes that in the majority of cases, criminal penalties for criminal trespass and criminal mischief will continue to be charged as permitted under current law. To the extent that this bill expedites removing an unauthorized occupant from residential premises without an eviction order, revenue and workload for the Judicial Department and local governments will decrease. There may be a minimal increase in civil and criminal filings related to declarants who provide false information in a declaration or occupants who cause property damage and cannot be charged for the crime of criminal mischief. The fiscal note assumes that the net result of all impacts will be minimal.

State Revenue

Beginning in FY 2018-19, the bill may both increase and decrease state General Fund and cash fund revenue. If fewer eviction cases are filed, revenue from fees will decrease. If additional filings occur related to a declarant providing false information or occupants causing property damage as described above, civil and criminal filings may increase, resulting in an increase in fee and fine revenue. Overall, these impacts are assumed to be minimal.

TABOR Refund

The bill increases and decreases state revenue subject to TABOR by a minimal amount in FY 2018-19 and FY 2019-20. State revenue is not currently expected to exceed the TABOR limit in either year and no refund is required. Therefore, the bill is not expected to impact TABOR refunds in these years. However, refunds in future years when the state next collects a TABOR surplus will be increased or reduced based on the net change in state revenue as a result of the bill.

State Expenditures

Beginning in FY 2018-19, the bill may both increase and decrease workload for the Judicial Department.

Trial courts. If fewer eviction cases are filed, workload will decrease. If additional filings occur related to a declarant providing false information or occupants causing property damage, civil and criminal filings may increase, resulting in an increase in workload. Overall, these impacts are assumed to be minimal and do not require any adjustments in appropriations for the trial courts.

Agencies providing representation to indigent persons. To the extent that any new class 1 misdemeanor cases are filed for the new crime of unauthorized alteration or damage of a residential property, workload and costs for the Office of the State Public Defender and the Office of the Alternate Defense Counsel will increase. This analysis assumes these impacts are minimal and do not require an increase in appropriations for either agency.

Local Government

This bill may impact local governments in several ways.

Criminal penalties. If the bill results in new criminal filings for the class 1 misdemeanor crime of unauthorized alteration or damage of a residential property, the bill will result in increased workload for district attorneys to prosecute the offenses. An offender convicted of a class 1 misdemeanor can be sentenced to jail 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. Estimated costs to house an offender in a county jail varies from \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.39 to house state inmates.

If cases are brought in Denver County Court, managed and funded by the City and County of Denver, court workload and revenue may increase. Probation services in the Denver County Courts may also experience a minimal increase in workload and revenue to supervise persons convicted under the bill within Denver County.

Law enforcement. The bill could result in fewer eviction cases and enforcement of eviction orders, which will reduce workload for local law enforcement agencies.

Effective Date

The bill takes effect July 1, 2018, and applies to requests for removal and offenses committed on or after this date.

State and Local Government Contacts

Judicial
Municipalities
Military Affairs

Counties
Sheriffs

District Attorneys
Information Technology