



## Legislative Council Staff

*Nonpartisan Services for Colorado's Legislature*

# Fiscal Note

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<b>Drafting Number:</b>	LLS 22-0358	<b>Date:</b>	February 28, 2022
<b>Prime Sponsors:</b>	Rep. Tipper; Soper Sen. Gonzales	<b>Bill Status:</b>	House Judiciary
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**Bill Topic:** PUBLIC BENEFITS THEFT

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**Summary of Fiscal Impact:**

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

This bill establishes public benefit theft when a person intentionally misrepresents or withholds information for determining eligibility to secure benefits for which they are not eligible. It may increase state and local workload and state revenue beginning in FY 2022-23.

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**Appropriation Summary:** No appropriation is required.

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**Fiscal Note Status:** The fiscal note reflects the introduced bill.

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## Summary of Legislation

This bill adds public benefit theft, defined as a person intentionally misrepresenting or withholding information for determining eligibility to secure benefits for which they are not eligible, to the existing offense of theft, and places parameters around this new offense. Public benefits include cash, food assistance, and medical assistance provided through an appropriation of federal, state, or local government money to an individual or household based on their economic circumstances or social condition.

The bill specifies how the amount of public benefits is calculated under this offense. Specifically, the value of the public benefit is the difference between the value of the public benefit received and the value of the public benefit the recipient was eligible for. The bill makes an exception to this calculation if an agency providing the benefit makes a referral for prosecution more than 180 calendar days after first receiving evidence of a misrepresentation or withholding of material fact. In these instances, the value of the public benefit received after the agency received such evidence must be subtracted from the total.

## **Comparable Crime Analysis**

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 creates a new factual basis for an existing crime. The following sections outline data on crimes that are comparable to the offense in this bill and discuss assumptions on future rates of criminal convictions resulting from the bill.

**Prior conviction data.** This bill creates a new factual basis for the existing offense of theft by defining “public benefit theft” and specifying how the value of the public benefit is calculated. To form an estimate on the prevalence of this new crime, the fiscal note analyzed the existing offense of fraudulent acts to obtain food stamps or an electronic benefits transfer card as a comparable crime. From FY 2018-19 to FY 2020-21, 23 individuals have been convicted and sentenced for this offense. Of the persons convicted, 4 were male, 18 were female, and 1 did not have a gender identified. Demographically, 18 were White, 1 was Black/African American, and 4 were classified as "Other."

**Assumptions.** While the bill expands a definition of theft in the criminal code, it also places restrictions on how the value of the public benefit stolen is calculated. Given that this type of theft can potentially be prosecuted under current law, the fiscal note assumes a minimal increase in filings from adding the more specific offense within the theft statute. In addition, the method of calculating the value of the public benefit under the bill may lower the amount of stolen property involved in these cases compared to current law, which may reduce the length of sentences to county jails and the Department of Corrections, as the offense level and sentence length are based on the amount of stolen property. Based on the low number of persons convicted for the comparable crime, the fiscal note assumes that any impact from sentencing changes will be minimal.

## **State Revenue and Expenditures**

Based on the assumptions above, this analysis assumes that there will be a minimal impact on state revenue and expenditures.

**Judicial Department.** Criminal fines and court fees, which are subject to TABOR, may increase by a minimal amount. Similarly, any increase in workload and costs for the Judicial Department, including the trial courts, Division of Probation, and agencies that provide representation to indigent persons are assumed to be minimal and no change in appropriations is required.

**Agencies providing public benefits.** State agencies that provide public benefits—including the Department of Human Services, Department of Health Care Policy and Financing, and the Department of Labor and Employment—may have additional workload to update policies and procedures concerning public benefit theft. However, the bill is not expected to significantly affect the number or types of cases referred for prosecution or impact existing fraud prevention activities in these departments. No change in appropriations is required for these agencies.

**Department of Law.** The department's criminal justice section may be asked to support a local jurisdiction with investigation efforts; however, no change in appropriation is required.

## Local Government

**Counties.** Counties, primarily through county departments of human and social services, have the primary responsibility for making referrals for prosecution for public benefit theft, both under the bill and current law. By adding the 180-day deadline for prosecuting the full value of public benefits, counties may be required to hire additional investigators in order to process the cases within this timeframe. See the Technical Note below concerning this 180-day timeframe.

**District attorneys and county jails.** It is expected that any workload or cost impacts for district attorneys or county jails will be minimal. District attorney offices and county jails are funded by counties.

## Technical Note

Under the bill, there is ambiguity about when the 180-day timeframe starts. Specifically, it is unclear if the timeframe starts when any employee discovers information about a case that may indicate public benefit theft, or if it starts when the case is formally referred internally for investigation by the agency providing public benefits. The bill may need additional clarification to prevent differing interpretations.

## Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

## State and Local Government Contacts

Counties	Education	Health Care Policy and Financing
Higher Education	Human Services	Information Technology
Judicial	Labor	Law
Municipalities	Public Health	