

**FINAL
FISCAL NOTE**

Drafting Number: LLS 12-0752

Date: June 6, 2012

Prime Sponsor(s): Rep. Fields
Sen. King S.

Bill Status: Signed into Law

Fiscal Analyst: Hillary Smith (303-866-3277)

TITLE: CONCERNING THE PENALTY FOR A PERSON WHO ESCAPES FROM A PLACE OF CONFINEMENT OTHER THAN A COUNTY JAIL OR CORRECTIONAL FACILITY.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue		
State Expenditures General Fund	Future savings beginning in FY 2016-17	
FTE Position Change		
Effective Date: The bill was signed into law by the Governor and took effect on May 17, 2012.		
Appropriation Summary for FY 2012-2013: None. The Department of Corrections will not experience a cost savings until FY 2016-17.		
Local Government Impact: None.		

Summary of Legislation

Under current law, persons who are convicted of a certain number of felonies over a designated time period are judged as habitual criminals and face enhanced sentencing penalties. This bill exempts charges of felony escape or attempt to escape from a place other than a county jail or a correctional facility from criteria used to designate a person as a habitual criminal. Examples of places other than a county jail or a correctional facility include community corrections and the Division of Youth Corrections. The bill applies to escape crimes that occur on or after the effective date of the bill.

Background

Enhanced sentencing for habitual criminals. A person convicted of any class 1, 2, 3, 4, or 5 felony who has been convicted of two felonies within the previous ten years is considered a habitual criminal and must be sentenced for a term of three times the maximum of the presumptive sentencing range for the felony. In addition, a person convicted of any felony who has been previously convicted of three or more felonies within any time frame is also considered a habitual criminal and must be sentenced for a term of four times the maximum of the presumptive sentencing range for the felony.

Felony escape and attempt to escape. Table 1 summarizes the different penalty level of the offenses of escape and attempt to escape affected by the HB12-1213. The classifications depend on the type of offense for which the escapee was confined, held, or charged.

Table 1. Classifications of Escape and Attempt to Escape Offenses Affected by HB12-1213			
<i>Offense</i>	<i>Type of Offense</i>	<i>Classification</i>	<i>Sentencing Scheme</i>
Escape	Knowingly escaping from custody or confinement following conviction of a class 1 or 2 felony.	Class 2 felony	<ul style="list-style-type: none"> • 8 - 24 years in prison; and/or • \$5,000 - \$1 million fine
	Knowingly escaping from custody or confinement following conviction of a class 3, 4, 5, or 6 felony.	Class 3 felony	<ul style="list-style-type: none"> • 4 - 12 years in prison; and/or • \$3,000 - \$750,000 fine
	Knowingly escaping from custody or confinement while being held for or charged with but not convicted of any felony.	Class 4 felony	<ul style="list-style-type: none"> • 2 - 6 years in prison; and/or • \$2,000 - \$5,000 fine
Attempt to Escape	Knowingly attempting to escape from custody or confinement following conviction of any felony.	Class 4 felony	<ul style="list-style-type: none"> • 2 - 6 years in prison; and/or • \$2,000 - \$5,000 fine
	Knowingly attempting to escape from custody or confinement within a community corrections program following a direct sentence to such a program after conviction of any felony.	Class 5 felony	<ul style="list-style-type: none"> • 1 - 3 years in prison; and/or • \$1,000 - \$100,000 fine
	Knowingly attempting to escape from custody or confinement within an intensive supervision parole following placement in such a program after conviction of any felony.	Class 5 felony	<ul style="list-style-type: none"> • 1 - 3 years in prison; and/or • \$1,000 - \$100,000 fine
	Knowingly attempting to escape from custody or confinement while being held for or charged with but not convicted of any felony.	Class 5 felony	<ul style="list-style-type: none"> • 1 - 3 years in prison; and/or • \$1,000 - \$100,000 fine

State Expenditures

Department of Corrections. Beginning in FY 2016-17, the Department of Corrections will experience decreased costs resulting from changes in the length of prison sentences. Offenders affected by this bill may be placed in either a state-run or a private contract prison, depending on several factors. State-run facilities are currently at or near capacity, and any offenders who receive shorter sentences as a result of this bill will either already reside in a private contract prison or will likely result in a shift of other inmates from private contract prisons to a state-run facility. Therefore, ***this fiscal note assumes that the impact of this bill will be on the population housed in private contract prisons, and savings are based on a weighted average of the annual cost to house a prisoner at a private prison.***

Offenders placed in a private contract prison cost the state about \$56.73 per offender per day, including the current daily rate of \$52.69 and an estimated \$4.04 per offender per day for medical care provided by the DOC. Table 2 shows the estimated cost of the bill over the next five fiscal years. The bed impact is based on historical conviction rates for escape crimes affected by the bill. The fiscal note assumes that within the next five years, four offenders will spend an average of 7 fewer years in prison. This pattern will continue each year thereafter, with a reduction of eight offenders in FY 2017-18, twelve offenders in FY 2018-19, and so on.

Table 2. Five-Year Fiscal Impact On Correctional Facilities				
Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2012-13	0.0	\$0	\$0	\$0
FY 2013-14	0.0	-	-	-
FY 2014-15	0.0	-	-	-
FY 2015-16	0.0	-	-	-
FY 2016-17	(4.0)	-	(\$82,828)	(\$82,828)
Total	(4.0)	\$0	(\$82,828)	(\$82,828)

The fiscal note assumes that any cost savings from the bill will not occur until FY 2016-17 because offenders will still be sentenced for their felony offense, even if they are no longer subject to enhanced sentencing under the habitual criminal statute. Furthermore, the fiscal note assumes that offenders with prior felonies will be sentenced to the maximum of the presumptive range for the offense that they are convicted of (at least 18 months, and up to 24 years). If such offenders are sentenced to a term that is less than the maximum, savings could occur earlier. It should be noted that even without a habitual criminal enhancement, some offenders will be sentenced for a term beyond the five-year time period examined by the fiscal note.

Data concerning the exact number of offenders who will no longer be subject to enhanced sentencing is not available, because statistics concerning habitual criminals only provide the offense that resulted in a habitual criminal enhancement, and not the prior offenses. Over the past three years, the DOC received an average of 48 habitual criminals per year. On average, two of those offenders per year were sentenced as a habitual criminal due to an escape or attempt to escape that was not from a correctional facility or a jail. This number represents about 4 percent of all habitual offenders, which corresponds to data indicating that 4 percent of all court commitments to DOC are charged with escape as their most serious crime. This fiscal note assumes that of the roughly 46 offenders who were not charged as habitual criminals due to an escape or an attempt to escape, 4 percent, or 2 offenders, have a prior felony of escape or attempt to escape from a place other than a correctional facility or jail, and would therefore also be affected by the bill.

It should be noted that data from the DOC indicates that some offenders who are subject to enhanced habitual criminal sentencing do not receive the full enhanced sentence. The exact reasons for this occurrence may include the effect of plea deals and a judge's discretion over sentencing. Because this fiscal note uses historical DOC sentencing data to predict future trends, this fiscal note assumes that in some instances, offenders will continue to not receive a full habitual criminal sentence.

Judicial Branch and the Office of the State Public Defender. The bill will have no impact on courts, because the number of criminal case filings as a result of escape will remain the same. The Office of the State Public Defender (OSPD) will have a slightly decreased workload because cases with enhanced sentencing require more work to defend, and such cases will be reduced by the bill. However, the decreased workload is not expected to be significant enough for a reduction in appropriations.

Department of Human Services. The bill is unlikely to impact the Department of Human Services. Juvenile offenders who are serving time in the Division of Youth Corrections for multiple felonies will most likely not be discharged until they are 21, regardless of changes to the habitual criminal statute.

Departments Contacted

Colorado Counties, Inc.
Judicial
Public Safety

Corrections
Human Services
Sheriffs

District Attorneys
Law