

Colorado Legislative Council Staff

**STATE
FISCAL IMPACT**

Drafting Number: LLS 01-0327
Prime Sponsor(s): Sen. Arnold
 Rep. Mitchell

Date: March 22, 2001
Bill Status: Senate Judiciary
Fiscal Analyst: Geoff Barsch (303-866-4102)

TITLE: CONCERNING PENALTIES FOR THE OFFENSE OF FAILURE TO REGISTER AS A SEX OFFENDER.

Fiscal Impact Summary	FY 2001/2002	FY 2002/2003
State Revenues		
General Fund	\$0	\$0
State Expenditures		
General Fund	\$486,269	\$669,935
FTE Position Change	0.0 FTE	0.0 FTE
Other State Impact: None		
Effective Date: Upon signature of the Governor		
Appropriation Summary for FY 2001/2002: \$486,269 GF - Department of Corrections		
Local Government Impact: See Local Government Impact section		

Summary of Legislation

This bill increases the penalty for the first offense of failure to register as a sex offender from a class 2 misdemeanor:

- to a class 5 felony for any sex offender convicted of or adjudicated for a felony sex offense;
- to a class 1 misdemeanor for any sex offender convicted of or adjudicated for a misdemeanor sex offense

For an adult offender convicted of misdemeanor failure to register, the bill imposes a mandatory minimum jail sentence of 180 days. The bill also classifies the misdemeanor level offense as a misdemeanor that presents an extraordinary risk of harm to society. The bill clarifies that any adult convicted of felony failure to register as a sex offender subject to sentencing under the "Colorado Sex Offender Lifetime Supervision Act of 1998."

State Revenues

Since this bill increases the penalty for failure to register as a sex offender from a class 2 misdemeanor to a class 5 felony, there may be an impact to the state General Fund. The penalty for a class 2 misdemeanor is a fine of \$250 to \$1,000, a jail term of three to twelve months, or both. The penalty for a class 5 felony is \$1,000 to \$100,000, a prison sentence of one to three years, or both. Fine revenue not otherwise appropriated is deposited into the state General Fund. It is at the discretion of the court to impose a fine, a prison sentence, or both. While the amount of fine revenue cannot be determined, Legislative Council staff estimates that 16 percent of all misdemeanor convictions, and 2 percent of all felony convictions, include a fine. The average fine for a class 2 misdemeanor is \$169, while the average fine for a class 5 felony is \$497. No additional fine revenue is anticipated since the increased average fine amount is offset by the lower likelihood of a fine being assessed.

State Expenditures

The Department of Corrections (DOC) will require a General Fund appropriation of \$486,269 in FY 2001-02 for new prison commitments. It is estimated that 7 offenders will be sentenced to the department annually under the bill. The estimate is based on the current level of class 2 misdemeanor convictions for failure to register as a sex offender. In FY 1998-99 — the most recent year for which Colorado District Attorneys' Council disposition data is available — 24 offenders were convicted with failure to register as the highest charge. Under the bill, offenders convicted of a felony sex offense who fail to register as a sex offender commit a class 5 felony. Felony sex offenses represented 74 percent of all sex offense filings in FY 1999-00. Assuming that 74 percent of the offenders convicted of failure to register as a sex offender were originally convicted of a felony sex offense, 18 offenders would be subject to class 5 felony penalties under the bill. Approximately 40 percent of all felony sex offenders convicted were sentenced to the DOC. Thus, it is estimated that 7 offenders will be sentenced to the DOC annually:

- 24 offenders will be convicted of failure to register as a sex offender;
- 74% of which (18) were originally convicted of felony sex offenses;
- 40% of which (7) will be sentenced to DOC.

Legislative Council staff estimates the average length of stay for a class 5 felony sex offense to be 32.5 months. An appropriation is required in FY 2001-02 to fund bed construction. Beginning in FY 2002-03, offenders charged under the bill's provisions will be housed by the DOC. Beginning in FY 2004-05 and beyond, those offenders will be released from the DOC at the same rate that new offenders enter. Therefore, the average daily attendance impact for this bill is 7.0 in FY 2002-03, 14.0 in FY 2003-04, and 19.0 every year thereafter.

Five-Year Fiscal Impact on Correctional Facilities

Section 2-2-703, C.R.S., requires that bills resulting in a net increase in periods of imprisonment cannot be passed without five years of appropriations for prison bed construction and operating costs. Construction costs are estimated to be \$69,467 per bed and operating costs are estimated to be \$26,689 per bed. It should be noted that the construction costs reflect the funding needed to construct beds in the fiscal year prior to when additional offenders are expected to enter the system. This lag accounts for the estimated time for criminal filing, trial, disposition, and sentencing.

FIVE-YEAR FISCAL IMPACT ON CORRECTIONAL FACILITIES				
Fiscal Year	ADA Impact	Construction Cost	Operating Cost	Total Cost
FY 2001-02	0.0	\$486,269	\$0	\$486,269
FY 2002-03	7.0	486,269	183,666	669,935
FY 2003-04	14.0	344,441	367,332	711,773
FY 2004-05	19.0	0	497,429	497,429
FY 2005-06	19.0	0	497,429	497,429
TOTAL		\$1,316,979	\$1,545,856	\$2,862,835

Local Government Impact

This bill may have a fiscal impact on local government due to a decrease in misdemeanor convictions and the associated jail sentences. It is estimated that 18 offenders currently subject to class 2 misdemeanor penalties will be subject to class 5 felony penalties under the bill. Further, it is estimated that six offenders currently subject to class 2 misdemeanor penalties will be subject to class 1 misdemeanor penalties, including a minimum jail sentence of 180 days. While the daily cost to house an offender in a county jail facility varies, the FY 2000-01 rate the state pays local jails for holding state inmates in county jails is \$49.40 per offender per day. Therefore, the bill will require county jails to house six offenders for 180 days at an estimated cost of \$53,352. Because the court has the discretion to impose a fine, a jail sentence, or both, the savings to local governments as a result of the 18 offenders subject to felony penalties cannot be determined at this time.

State Appropriations

This fiscal note indicates that the Department of Corrections will require a General Fund appropriation of \$486,269 in FY 2001-02, and \$2,376,566 for the remainder of the five-year period pursuant to Section 2-2-703, C.R.S.

Departments Contacted

Corrections Judicial