

*Colorado Legislative Council Staff*

**STATE  
REVISED FISCAL IMPACT**

(replaces fiscal impact dated March 22, 2001)

<b>Drafting Number:</b> LLS 01-0327	<b>Date:</b> April 21, 2001
<b>Prime Sponsor(s):</b> Sen. Arnold	<b>Bill Status:</b> Senate Appropriations
Rep. Mitchell	<b>Fiscal Analyst:</b> 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
<b>State Revenues</b>		
General Fund	\$0	\$0
<b>State Expenditures</b>		
General Fund	\$466,008	\$176,013
Cash Funds - Offender Services Fund	\$ 36,060	\$ 34,135
<b>FTE Position Change</b>	0.5 FTE	0.0 FTE
<b>Other State Impact:</b> None		
<b>Effective Date:</b> Upon signature of the Governor		
<b>Appropriation Summary for FY 2001/2002:</b> \$466,008 GF - Department of Corrections \$ 36,060 CF and 0.5 FTE - Judicial Department		
<b>Local Government Impact:</b> See Local Government Impact section		

**Summary of Legislation**

This bill, **as amended by the Senate Judiciary Committee**, increases the penalty for the first offense of failure to register as a sex offender from a class 2 misdemeanor:

- to a **class 6 felony** for any sex offender convicted of or adjudicated for a felony sex offense;
- **to a class 5 felony for second and subsequent offenses;**
- to a class 1 misdemeanor for any sex offender convicted of or adjudicated for a misdemeanor sex offense

The bill also classifies the misdemeanor level offense as a misdemeanor that presents an extraordinary risk of harm to society. The bill requires that any adult convicted of felony failure to register as a sex offender and sentenced to probation shall be subject to the Sex Offender Intensive Supervision Program. Any offender sentenced to imprisonment will be subject to the Intensive Supervision Parole Program upon release to parole.

**State Revenues**

Since this bill, as amended, increases the penalty for failure to register as a sex offender for anyone adjudicated or convicted of a felony sex offense from a class 2 misdemeanor to a class 6 felony — a class 5 felony for second and subsequent offenses — there may be an impact to the state General Fund. The penalties under current and proposed statute are shown in Table 1.

<b>TABLE 1. PENALTIES FOR FAILURE TO REGISTER AS A SEX OFFENDER</b>		
	<b>Fine</b>	<b>Jail/Prison Sentence</b>
Current Penalty - Class 2 Misdemeanor	\$250 to \$1,000	jail term of 3 to 12 months
Proposed 1 <sup>st</sup> offense - Class 6 Felony	\$1,000 to \$100,000	prison sentence of 12 to 18 months
Proposed 2 <sup>nd</sup> offense - Class 5 Felony	\$1,000 to \$100,000	prison sentence of one to three years

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 bill, as amended, will have a fiscal impact to the Department of Corrections (DOC) and the Judicial Department. The impacts are shown below.

**Judicial Department.** The Judicial Department will require \$36,060 and 0.5 FTE in FY 2001-02 for increased caseload in the Sex Offender Intensive Supervision Program (SOISP). It is estimated the bill will result in 11 offenders placed under SOISP supervision annually. The caseload under the SOISP is limited to 25 offenders per probation officer. Thus, the department will require 0.5 FTE Probation Officer and \$7,392 for offender treatment services.

**Department of Corrections.** The DOC will require a General Fund appropriation of \$466,008 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 6 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 6 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.

The Department of Corrections estimates the average length of stay for a class 6 felony offense to be 11.5 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 2003-04 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 6.7 in FY 2002-03 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.

<b>TABLE 2. FIVE-YEAR FISCAL IMPACT ON CORRECTIONAL FACILITIES</b>				
<b>Fiscal Year</b>	<b>ADA Impact</b>	<b>Construction Cost</b>	<b>Operating Cost</b>	<b>Total Cost</b>
FY 2001-02	0.0	\$466,008	\$0	\$466,008
FY 2002-03	6.7	0	176,013	176,013
FY 2003-04	6.7	0	176,013	176,013
FY 2004-05	6.7	0	176,013	176,013
FY 2005-06	6.7	0	176,013	176,013
<b>TOTAL</b>		\$466,008	\$704,052	\$1,170,060

The department will also require \$38,721 General Fund beginning in FY 2003-04 for additional parole services. Of the total, \$15,950 is for personal services and operating and \$22,771 is for contract services.

### **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 6 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. 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 may require county jails to house six offenders. 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 the following appropriations are required:

- The Department of Corrections will require a General Fund appropriation of \$466,008 in FY 2001-02, and \$704,053 for the remainder of the five-year period pursuant to Section 2-2-703, C.R.S.
- The Judicial Department will require an appropriation of \$36,060 and 0.5 FTE from the Offender Services Fund.

### **Departments Contacted**

Corrections

Judicial