

Colorado Legislative Council Staff Fiscal Note

**FINAL
FISCAL NOTE**

Drafting Number: LLS 08-0894
Prime Sponsor(s): Sen. Harvey
 Rep. Stephens

Date: May 21, 2008
Bill Status: Postponed Indefinitely
Fiscal Analyst: Todd Herreid (303-866-2633)

TITLE: CONCERNING REGULATION OF SEXUALLY EXPLICIT REPRESENTATIONS THAT ARE HARMFUL TO MINORS.

Fiscal Impact Summary	FY 2008-2009	FY 2009-2010
State Revenue		
Cash Fund - Fines Collection Cash Fund	potential increase	potential increase
State Transfers or Diversions		
Transfer from the General Fund to the Capital Construction Fund	(\$125,165)	\$0
State Expenditures		
General Fund		\$28,758
Cash Funds - Capital Construction Fund appropriation to the Corrections Expansion Reserve Fund	\$125,165	
FTE Position Change	0.0 FTE	0.0 FTE
Effective Date: The bill was postponed indefinitely by the Senate Appropriations Committee on April 11, 2008.		
Appropriation Summary for FY 2008-2009: See State Appropriations section.		
Local Government Impact: None.		

Summary of Legislation

This bill repeals and reenacts, with modifications, laws concerning sexually explicit materials and performances that are harmful to children. The bill defines material to include pictures, drawings, video or digital recordings, or other written or electronic representations of nudity or sexual activity. The bill also establishes standards for what constitutes harmful materials or performances and it provides affirmative defenses to prosecution. Like current law, disseminating material that is harmful to minors is a Class 2 misdemeanor.

The bill also created a new Class 4 felony of luring a child with material that is harmful to a minor. A person commits this crime if he or she has the intent to commit sexual assault or unlawful sexual contact with a child under 15 years of age and they lure the child to enter a vehicle, building, room, or secluded place with the enticement of sexually explicit materials. A second offense of luring a child with material that is harmful to a minor is a Class 3 felony.

State Revenue

Fine Revenue. Under current law, persons committing a Class 3 or 4 felony may be subject to a fine ranging from \$2,000 to \$750,000. Because the imposition of fines is discretionary and the collection of the fine is difficult, the fiscal note did not estimate the additional revenue resulting from this bill. However, given the relatively small number of offenders who are projected to be convicted of this crime, the revenue impact is expected to be minimal. Fine revenue is deposited into the Fines Collection Cash Fund, which is administered by the Judicial Branch.

Transfers or Diversions

Pursuant to the requirements of Section 2-2-703, C.R.S. and Section 17-1-116 C.R.S., this bill transfers \$125,165 in FY 2008-09 from the General Fund to the Capital Construction Fund (CCF), then appropriates the money to the Corrections Expansion Reserve Fund (CERF). This amount will not be available for General Fund appropriations. For a further explanation of this transfer and appropriation, please see the sections related to the five-year fiscal impact on correctional facilities and state appropriations below.

General Fund for highways and capital construction. Based on the March 2008 Legislative Council Staff revenue forecast, there is enough revenue to fully fund the diversion to the Highway Users Tax Fund (HUTF) under the provisions of SB 97-1 in FY 2007-08 and FY 2011-12 and have additional revenue flow into the General Fund excess reserve. Under the provisions of HB02-1310, revenue in the General Fund excess reserve is diverted two-thirds to the HUTF and one-third to capital construction. Construction costs for new prison beds are funded outside of the 6 percent appropriations limit. The increased expenditure needed to fund this element of the bill will serve to reduce the amount of money available for diversion to the HUTF through FY 2010-11. In FY 2011-12, the increased bed costs will serve to reduce the diversion to the HUTF and for capital construction. In FY 2008-09, this bill will reduce diversions to the HUTF by \$125,165.

State Expenditures

Department of Corrections (DOC). The bill will increase expenditures in the department by \$125,165 in FY 2008-09 and \$28,758 in FY 2009-10. The five-year expenditure impact is estimated at \$447,911, as indicated in Table 1. The bill is expected to create 1 new Class 4 felony admission to DOC every other year. In the past six years, an average of 26 offenders were convicted of enticement of a child annually, with about 25 percent being sentenced to DOC. This bill is expected to increase convictions by 2 per year. The fiscal note assumes that 1 conviction every other year will be sentenced to DOC, with the balance receiving sentences to probation. The estimated length of stay for this offender is about 50 months.

Five-Year Fiscal Impact on Correctional Facilities

Section 2-2-703, C.R.S., specifies that no bill can be passed by the General Assembly which results in a net increase in periods of imprisonment in *state correctional* facilities unless it contains an appropriation of money sufficient to cover the increased capital construction costs and operating costs in each of the first five fiscal years of the bill. Sections 17-1-102, 104.9, and 105.5, C.R.S., authorize the department to permanently place inmates classified as medium custody and below in private contract prisons. Inmates classified higher than medium custody cannot be placed in private contract prisons, except under "correctional emergency" conditions. *The fiscal note assumes that the new inmates identified in this bill will be placed in state correctional facilities, recognizing that some of these inmates could be placed in private contract prisons.*

If an inmate is placed in a state correctional facility, the additional construction costs are estimated to be \$125,165 per inmate bed. Operating costs are \$78.79 per bed per day or \$28,758 per bed per year. It should be noted that the construction costs reflect the funding needed to construct inmate 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. If an inmate is placed in a private contract prison, the state incurs no additional capital construction costs; however, the state pays private prisons at a rate of \$52.69 per bed per day and the department incurs other costs of \$5.15 per bed per day for inmates placed in private prisons. The total cost to the department is therefore \$21,112 per private prison bed per year.

Prison bed construction is funded through a General Fund transfer to the Capital Construction Fund, which is then transferred to the Corrections Expansion Reserve Fund. These appropriations are not subject to the 6 percent statutory General Fund appropriations limit. Money transferred to the Corrections Expansion Reserve Fund is typically appropriated each year for a variety of capital projects requested by the Department of Corrections; money is not held indefinitely for the construction of a new prison. General Fund appropriations for operating costs are subject to the 6 percent limit.

Table 1. Five-Year Fiscal Impact On Correctional Facilities				
Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2008-09	0.0	\$125,165	\$0	\$125,165
FY 2009-10	1.0	\$0	\$28,758	\$28,758
FY 2010-11	1.0	\$125,165	\$28,758	\$153,923
FY 2011-12	2.0	\$0	\$57,516	\$57,516
FY 2012-13	2.0	\$25,033	\$57,516	\$82,549
Total		\$275,363	\$172,363	\$447,911

State Appropriations

In FY 2008-09, the bill requires a General Fund transfer of \$125,165 to the Capital Construction Fund and an appropriation of the same amount from that fund to the Corrections Expansion Reserve Fund. The bill also requires appropriations to cover construction and operating costs, as identified in Table 1 for FY 2009-10 through FY 2012-13.

Departments Contacted

Education
Public Safety

Corrections
Human Services

Judicial