

Colorado Legislative Council Staff Fiscal Note

**FINAL
FISCAL NOTE**

Drafting Number: LLS 11-0298
Prime Sponsor(s): Sen. Shaffer B.
 Rep. McCann

Date: August 11, 2011
Bill Status: Signed into Law
Fiscal Analyst: Jessika Shipley (303-866-3528)

TITLE: CONCERNING INCREASING THE ENFORCEMENT OF PROHIBITIONS AGAINST CERTAIN PROSTITUTION-RELATED OFFENSES, AND, IN CONNECTION THEREWITH, AUTHORIZING THE CREATION OF A PROGRAM FOR CERTAIN FIRST-TIME OFFENDERS OF SUCH OFFENSES.

Fiscal Impact Summary	FY 2011-2012	FY 2012-2013
State Revenue		
Cash Fund - Prostitution Enforcement Fund	\$3,500	\$13,500
State Expenditures		
Cash Fund - Prostitution Enforcement Fund	\$24,913	\$29,923
FTE Position Change	0.5	0.5
Effective Date: The bill was signed into law by the Governor on June 2, 2011 and took effect August 10, 2011.		
Appropriation Summary for FY 2011-2012: No appropriation is required until the Prostitution Enforcement Cash Fund has sufficient funds to implement the grant program.		
Local Government Impact: Local governments that establish diversion programs under the bill will see increased costs, but the costs cannot be quantified at this time.		

Summary of Legislation

The bill authorizes courts to impose a fine of up to \$5,000 on any individual convicted of soliciting of prostitution or patronizing a prostitute, and between \$5,000 and \$10,000 for pandering convictions, in addition to any other penalty.

The bill creates the Prostitution Enforcement Resources Grant Program administered by the Division of Criminal Justice (DCJ) within the Department of Public Safety; fines are to be deposited into the associated cash fund. The DCJ is authorized to accept and expend gifts, grants, and donations, and is not required to implement the grant program until sufficient moneys are in the fund. Up to 3 percent of the moneys annually appropriated from the Prostitution Enforcement Cash Fund may be used to offset the administrative costs of the DCJ associated with administering the program.

Beginning July 1, 2013, municipal law enforcement agencies may apply to the DCJ for one-to three-year grants to fund efforts to combat prostitution-related offenses. The DCJ is required to solicit and review grant applications from municipal law enforcement agencies. The bill provides requirements for the grant applications and criteria to be used by the DCJ when selecting grant

recipients. The DCJ is required to prepare and submit to the House and Senate Judiciary Committees an annual report regarding the grant program. The executive director of the Department of Public Safety is required, on or before April 1, 2012, to promulgate rules for the administration of the grant program. The grant program is repealed effective July 1, 2018.

Municipal courts are authorized to create and administer diversion programs for individuals charged with soliciting of prostitution, patronizing a prostitute, or any corresponding municipal code or ordinance. Such programs will only be available to offenders who have made a deferred sentencing agreement with the prosecuting attorney and who have no prior convictions for a number of named offenses, including human trafficking, human smuggling, prostitution-related offenses, and sex offenses, among others.

The bill outlines specific requirements for the diversion programs, including allowing courts to require that offenders pay an administrative fee to cover the cost of the program. The prosecuting attorney has sole discretion over enrollment in the program, as a condition of plea bargain agreements. If an offender is offered enrollment, the plea bargain must include the following stipulations:

- the offender must enter a guilty plea;
- the court is required to defer judgement and sentencing for no more than two years while the offender completes the program;
- the court will dismiss the prostitution-related charges upon the offender's successful completion of the program;
- the offender is required to waive his or her right to a speedy trial; and
- if the offender fails to complete the program or to satisfy any other condition of the plea bargain agreement, he or she will be sentenced for the original charges and pay a fine of between \$2,500 and \$5,000.

Municipal courts that establish these programs are required to report to the House and Senate Judiciary committees within two to three years after the creation of the program. The report must include the cost of the program, and the extent to which such cost is mitigated by the fees paid by the offender, and the effectiveness of the program in reducing recidivism.

State Revenue

The bill requires the collection of new fines of up to \$10,000 for the offenses of soliciting of prostitution, pandering, or patronizing a prostitute. Although the existing fines for these offenses range from \$200 to \$300, the revenue impact is expected to be minimal. Collecting fines of this magnitude is difficult due to the high dollar amount. The Judicial Branch reports that only about 10 percent of fine revenue is collected in cases where the fines imposed are \$5,000 or more. Also, courts usually waive fines when there is a finding of indigence. The fines for the named offenses are currently waived in approximately 50 percent of cases.

The bill took effect on August 10, 2011, and is presumably applicable to offenses committed on or after that date. Based on a three-year average of prostitution-related cases, the fiscal note assumes that there will be a total of 7 convictions in FY 2011-12 where the offense was committed on or after August 10, 2011, and the defendant was not declared indigent. Assuming a fine of \$5,000 in each case and a 10 percent collection rate, the fine revenue for FY 2011-12 is expected to be approximately \$3,500. In FY 2012-13, more of the convictions will have been committed on or after August 10, 2011 (17 cases total), and an additional 15 percent of the FY 2011-12 fines will be collected. It is assumed that the fine revenue for FY 2012-13 as a result of the bill will be approximately \$13,500.

State Expenditures

Department of Public Safety. Costs for the department will increase by \$24,913 and 0.5 FTE in the first year of implementation and by \$29,923 in the following year. The DCJ is responsible for establishing and administering the grant program. Rules will be promulgated and policies implemented. Grant applications will be reviewed and grants awarded. The DCJ will provide oversight and monitoring of the grants, in addition to collecting data and preparing an annual report. The costs associated with these responsibilities are shown in Table 1. It is important to note that the bill allows the DCJ to use up to 3 percent of the monies in the Prostitution Enforcement Cash Fund for administrative costs. As such, the fund needs to have a balance of \$830,434 in the first year of implementation and must maintain a balance of at least \$997,434 each year thereafter in order for the department to pay for such costs.

Cost Components	FY 2011-12	FY 2012-13
Personal Services	\$22,086	\$29,448
FTE	0.5	0.5
Operating Expenses	\$475	\$475
Capital Outlay	\$2,352	\$0
TOTAL	\$24,913	\$29,923

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 2.

Table 2. Expenditures Not Included Under SB 11-085*		
Cost Components	FY 2011-12	FY 2012-13
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$3,550	\$3,550
Supplemental Employee Retirement Payments	\$999	\$1,570
TOTAL	\$4,549	\$5,120

**More information is available at: <http://colorado.gov/fiscalnotes>*

Local Government Impact

The bill authorizes, but does not require, municipal courts to establish diversion programs for individuals who solicit or patronize prostitutes. It is reasonable to expect a successful program to have a coordinator, treatment providers, drug and alcohol monitoring, and the time of at least one judge, court personnel, and probation officers on a part-time, but regular, basis. Municipal courts that do establish such programs are authorized to impose a fee to pay administration costs. Without information about which municipalities will establish programs and how such programs will be structured, the fiscal note is unable to quantify the costs to local governments.

State Appropriations

No appropriation is needed until the Prostitution Enforcement Cash Fund reaches a balance of \$830,434.

Departments Contacted

Judicial Public Safety