

**FINAL
FISCAL NOTE**

Drafting Number: LLS 15-0898	Date: October 5, 2015
Prime Sponsor(s): Rep. Conti; Fields	Bill Status: Signed into Law
Sen. Cooke; Johnston	Fiscal Analyst: Kerry White (303-866-3469)

BILL TOPIC: INCREASE PENALTY SEXUAL EXPLOITATION OF CHILD

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue		
State Expenditures	<u>\$11,034</u>	<u>\$275,849</u>
General Fund	11,034	275,849
FTE Position Change		
Appropriation Required: \$1,749,986 - Department of Corrections (FY 2105-16 - FY 2019-20).		

* This summary shows changes from current law under the bill for each fiscal year.

Summary of Legislation

This bill increases the penalty for certain cases of sexual exploitation of a child by possession of sexually exploitative material from a class 6 felony to a class 5 felony. It also modifies terms concerning electronic media that constitutes sexually exploitative material.

Background

Between January 1, 2012, and March 5, 2015, there were 129 cases where at least one charge of sexual exploitation of a child under Section 18-6-403 (3)(b), C.R.S. was filed as a class 6 felony. According to the Department of Corrections (DOC), there were 12 offenders sentenced to the custody of the department in the last fiscal year. The current average length of stay for a class 6 felony sex offense is 11.5 months. The current average length of stay for a class 5 felony sex offense is 33.6 months. The fine penalty for a class 6 felony and a class 5 felony is the same (\$1,000 to \$100,000, when assessed).

State Expenditures

This bill is expected to increase state expenditures in the DOC beginning in FY 2015-16 as shown in Table 1. The bill may also increase workload and costs for the Judicial Department as discussed below.

Five-Year Fiscal Impact on Correctional Facilities

This bill is anticipated to increase state General Fund expenditures by an estimated \$1,749,986 for the Department of Corrections (DOC) between FY 2015-16 and FY 2019-20. This increase assumes 12 offenders per year will be convicted of a class 5 felony rather than a class 6 felony and have an average length of stay of 33.6 months rather than 11.5 months.

Current law prohibits the General Assembly from passing any bill to increase periods of imprisonment in state correctional facilities without appropriating an amount sufficient to cover the increased capital construction and operating costs of the bill in each of the first five fiscal years. However, current law also allows the DOC to place offenders classified as medium custody and below in private contract prisons, for which no state capital construction costs are incurred.

Offenders sentenced under this bill to DOC may be placed in either a state-run or a private contract prison, depending on several factors. Any offenders that *must* be housed in a state-run prison will likely require a shift of other inmates in that facility to private contract prisons. Therefore, this fiscal note assumes that the impact of this bill will be accommodated through the use of private contract prisons, and that no new capital construction funds are necessary.

Offenders placed in a private contract prison cost the state about \$60.46 per offender per day, including the current daily rate of \$55.08 and an estimated \$5.38 per offender per day for medical care provided by the DOC. Table 1 shows the estimated cost of the bill over the next five fiscal years.

Table 1. Five-Year Fiscal Impact On Correctional Facilities				
Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2015-16	0.5	\$0	\$11,034	\$11,034
FY 2016-17	12.5	\$0	\$275,849	\$275,849
FY 2017-18	22.1	\$0	\$487,701	\$487,701
FY 2018-19	22.1	\$0	\$487,701	\$487,701
FY 2019-20	22.1	\$0	\$487,701	\$487,701
Total				\$1,749,986

Judicial Department. To the extent that an increased penalty causes more cases to go to trial, the bill may increase workload or costs for the trial courts, the Office of the State Public Defender, and the Office of Alternate Defense Counsel, to provide representation for any persons deemed to be indigent. The fiscal note assumes any such increases are minimal and will not require an increase in appropriations for any agency within the Judicial Department.

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. HB15-1341 increases the penalty for certain cases of sexual exploitation of a child by possession of sexually exploitative material from a class 6 felony to a class 5 felony. Between January 1, 2012 and March 5, 2015, there were 129 cases where at least one charge of this offense was filed. Of this number, 95 percent were male and 5 percent were female. The ethnic composition of these offenders is as follows:

- 89% Caucasian;
- 5% Hispanic;
- 4% Black; and
- 2% Other or No Response.

Effective Date

The bill was signed into law by the Governor on June 4, 2015, and it became effective on August 5, 2015.

State Appropriations

The bill provides the Department of Corrections the five-year appropriations of \$1,749,986 General Fund as shown in Table 1.

State and Local Government Contacts

Corrections

District Attorneys

Judicial