



Colorado Legislative Council Staff Fiscal Note
**STATE and LOCAL
 FISCAL IMPACT**

Drafting Number: LLS 10-0755
Prime Sponsor(s): Sen. Hudak
 Rep. Rice

Date: February 11, 2010
Bill Status: Senate Judiciary
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TITLE: CONCERNING INVASION OF PRIVACY.

Fiscal Impact Summary	FY 2010-2011	FY 2011-2012
State Revenue		
State Transfers or Diversions Transfer from the General Fund to the Capital Construction Fund	(\$83,861)	(\$13,418)
State Expenditures General Fund Cash Funds - Capital Construction Fund appropriation to the Corrections Expansion Reserve Fund	\$83,861	\$29,037 \$13,418
FTE Position Change	0.0 FTE	0.0 FTE
Effective Date: July 1, 2010.		
Appropriation Summary for FY 2010-2011: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

This bill moves the offense of invasion of privacy for sexual gratification from the unlawful sexual contact statute to its own statute. The penalty for invasion of privacy for sexual gratification is raised from a class 1 misdemeanor to a class 6 felony when it is the second or subsequent offense or the person observed or photographed is under the age of 18. The definition of a "photograph" for the purpose of invasion of privacy for sexual gratification and criminal invasion of privacy is expanded to include a live feed.

The penalty for the offense of eavesdropping is lowered from a class 6 felony to a class 1 misdemeanor.

State Revenue

Per Section 18-1.3-401 (III) (A), C.R.S., the fine penalty for a class 6 felony is \$1,000 to \$100,000. Unless otherwise provided by law, the fines are to be deposited in the state Fines Collection Cash Fund for annual appropriations to cover associated administrative and personnel

costs. All unexpended balances of the cash fund revert to the state General Fund at the end of each fiscal year. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to the cash fund and the General Fund cannot be determined.

State 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 \$83,861 from the General Fund to the Capital Construction Fund in FY 2010-11, then appropriates the money to the Corrections Expansion Reserve Fund. Thus, this amount will not be available for General Fund appropriations. For a further explanation of this transfer and appropriation, see the section related to the five-year impact on correctional facilities.

State Expenditures

Judicial Department. Raising the penalty for some invasion of privacy cases and lowering the penalty for eavesdropping cases will result in approximately the same number of cases being heard in county court (for misdemeanors) and in district court (for felonies). As such, the department's costs will remain constant.

Department of Corrections (DOC). **The DOC requires additional General Fund expenditures in FY 2010-11 of \$83,861 and \$42,455 in FY 2011-12.** Raising the penalty level for invasion of privacy for sexual gratification to a class 6 felony in some cases and adding a live feed as a means of committing the offense are expected to result in one new offender being admitted to the DOC each year. The average length of stay for class 6 felony sex offense is 13.9 months.

Lowering the penalty for eavesdropping is not expected to impact the DOC because no offenders have been sentenced to imprisonment for that offense in the past five years.

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 allocated between state correctional facilities and private contract prisons according to historical patterns.***

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 \$88.60 per bed per day or \$32,339 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 a rate of \$61.19 per bed per day for inmates placed in private prisons. The total cost to the department is therefore \$22,334 per private prison bed per year. Departmental data indicates that 33 percent of class 6 felonies are housed in private prisons, and both the construction and operating costs presented in Table 1 have been prorated accordingly.

Table 1. Five-Year Fiscal Impact On Correctional Facilities				
Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2010-11	0.0	\$83,861	\$0	\$83,861
FY 2011-12	1.0	\$13,418	\$29,037	\$42,455
FY 2012-13	1.2	\$0	\$33,683	\$33,683
FY 2013-14	1.2	\$0	\$33,683	\$33,683
FY 2014-15	1.2	\$0	\$33,683	\$33,683
Total	4.5	\$97,279	\$130,086	\$227,365

Local Government Impact

The penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails a daily rate of \$50.44 to house state inmates. It is assumed that the impact of this new misdemeanor will be minimal and will not create the need for additional county jail space.

State Appropriations

For FY 2010-11, the DOC requires an appropriation of \$83,861 from the Corrections Expansion Reserve Fund, plus the other five-year costs detailed in Table 1.

Departments Contacted

Corrections Judicial