

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL  
REVISED FISCAL IMPACT**

(replaces fiscal note dated April 5, 2013)

**Drafting Number:** LLS 13-0289

**Date:** April 17, 2013

**Prime Sponsor(s):** Rep. McNulty  
Sen. Roberts

**Bill Status:** Senate Judiciary

**Fiscal Analyst:** Kerry White (303-866-3469)

**TITLE:** CONCERNING EVIDENCE COLLECTED IN CONNECTION WITH A SEXUAL ASSAULT.

<b>Fiscal Impact Summary</b>	<b>FY 2013-2014</b>	<b>FY 2014-2015</b>
<b>State Revenue</b>		
<b>State Expenditures</b>		
General Fund	up to \$13,934,124	\$5,202,806
<b>FTE Position Change</b>	9.0 FTE	9.8 FTE
<b>Effective Date:</b> Upon signature of the Governor, or upon becoming law without his signature.		
<b>Appropriation Summary for FY 2013-2014:</b> The appropriations clause for this bill differs from the analysis of its costs. See the State Expenditures and Appropriations sections for more information.		
<b>Local Government Impact:</b> See Local Government Impact section.		

**Summary of Legislation**

This *reengrossed* bill sets forth new requirements concerning the collection and treatment of forensic medical evidence (evidence) of alleged sexual assault. First, the bill requires the Department of Public Safety (DPS) to convene a group of stakeholders to develop rules on the standards and timing for submitting, analyzing, and comparing such evidence going forward. Rules are also to address who may give consent to release evidence, when it is required, and how it may be withdrawn. The rules must be in place within six months of the bill's effective date and are required to specify that once the backlog is resolved, all evidence that meets the criteria for mandatory submission must be submitted within 21 days. Within 90 days of promulgation, medical facility personnel and law enforcement agencies must be in compliance with the rules.

**Backlog.** The bill also lays out a plan to eliminate a backlog for testing evidence of alleged sexual assault. Within 90 days of the bill's effective date, law enforcement agencies must submit an inventory of untested evidence. Other existing evidence, subject to available space, is also to be submitted within 120 days. Finally, the CBI is also required to provide a report to the Governor and legislative committees, within 120 days of the bill's effective date, that proposes a plan to test backlogged evidence and newly collected evidence.

**State Expenditures**

Overall, this bill is anticipated to increase state expenditures within the Department of Public Safety by up to \$13,934,124 and 9.0 FTE in FY 2013-14 and \$5,202,806 and 9.8 FTE each full fiscal year thereafter. Table 1 and the discussion that follows describe the cost components of the bill.

<b>Table 1. Expenditures Under HB13-1020</b>		
<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Personal Services	\$638,423	\$696,461
FTE	9.0	9.8
Operating Expenses and Capital Outlay	55,399	9,310
Legal Services	3,090	0
DNA Equipment and Maintenance	1,223,530	122,353
DNA Software	100,000	0
Laboratory Supplies	805,946	805,946
DNA Evidence Kit Processing	840,000	840,000
Private Lab - Testing of Backlog Evidence	7,539,000	0
Leased Space	2,728,736	2,728,736
<b>TOTAL</b>	<b>up to \$13,934,124</b>	<b>\$5,202,806</b>

**Key assumptions.** Based on a comparison between the number of evidence kits collected versus those submitted for testing among several local law enforcement agencies, the fiscal note assumes that the CBI currently tests about 30 percent of all evidence kits collected in a given year (754 of about 2,513).

**Testing of mandatory evidence.** DPS is required, by rule, to determine which evidence is mandatory and must be submitted by local law enforcement agencies to the CBI versus which evidence may be submitted as space is available. However, the bill specifies that newly collected evidence should be included in the plan to be submitted within 120 days of the bill becoming law. Based on a current increase in the rate of submission of evidence kits since November 2012 and preliminary conversations between CBI and local law enforcement agencies, this analysis assumes that nearly all evidence kits collected each year will be submitted for testing following the implementation of HB13-1020. Costs are based on an estimated 1,600 additional evidence kits needing to be processed per year as of FY 2013-14.

As the appropriation currently included in the bill provides no funding for these costs, the fiscal note assumes that the DPS will be required to prepare a supplemental budget request in January 2014. Depending on the timing of the request, the results of rule-making, as well as the timing of the processing of backlog evidence, the fiscal note assumes that either one of two scenarios will occur. Either the DPS will be required to request up to an additional \$7.6 million and 9.0 FTE

in FY 2013-14 and these moneys will be appropriated in the 2014 legislative session or backlog will grow by up to 1,600 additional evidence kits per year and costs will be delayed to a future fiscal year. The costs shown in this fiscal note assume that the department will require additional resources in FY 2013-14.

***Personal services.*** DPS requires 8.0 FTE Criminal Investigators and 0.6 FTE each of a Criminal Investigator Supervisor, Laboratory Technician, and Administrative Assistant. Annual salary costs are \$696,461, prorated in the first year to account for the General Fund paydate shift. Operating costs are \$9,310 per year. One-time capital outlay costs of \$46,089 are also included in the first year.

***DNA equipment and evidence kit processing.*** Two "DNA Set ups" are required to process the annual increase in evidence kit submissions. This includes one-time costs for equipment and software of \$1,323,530. Beginning in the second year, maintenance costs are assumed to equal 10 percent of the purchase price. Each year, laboratory costs are assumed to be \$805,946. Evidence kit processing is based on an assumed cost of \$525 per kit. To house the new equipment and staff, leased space is also required, the annual cost for which is calculated as \$538 per square foot.

***Rule making.*** DPS will be required to promulgate rules about the treatment of evidence of alleged sexual assault. Rule making is estimated to cost \$3,090 in legal services.

***Backlog evidence.*** The exact number of backlog evidence kits is not expected to be available until August or September 2013, when local law enforcement agencies are required to submit an inventory of backlog evidence. Because this timing falls outside of the legislative session and the bill requires testing of backlog evidence to be completed by June 30, 2014, for the purposes of estimating costs, this analysis assumes that backlog is equivalent to two years of evidence kit collections, or 5,026 evidence kits. Due to the costs involved, as well as federal requirements concerning how DNA profile results may be uploaded into the Combined DNA Index System (CODIS), it is assumed that local governments will not choose to conduct private testing. However, due to the volume of evidence kits and the testing deadline, CBI will be required to contract with a private lab to analyze the kits at a cost of \$1,500 each. As amended, the bill provides funding to analyze about 4,234, or about 84 percent of these kits in FY 2013-14.

***Judicial Branch.*** To the extent that increasing the amount of evidence tested results in an increase in DNA matches, the bill could increase the number of cases filed in state courts. As it is not known how many or the type of case filings that will occur, it is not possible to determine the fiscal impact. This analysis assumes the Judicial Branch will request additional appropriations through the annual budget process as needed.

***Department of Corrections.*** Similar to the Judicial Department, if more persons are convicted as a result of processing evidence that otherwise would not have been tested, it could increase the number of persons incarcerated in a state prison. As it is unknown how much evidence will be tested and what the results of that testing will be, it is not possible to determine the fiscal impact. This analysis assumes that the department will request any additional resources required through the annual budget process.

**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.

<b>Table 2. Expenditures Not Included Under HB13-1020*</b>		
<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$66,101	\$66,101
Supplemental Employee Retirement Payments	42,749	48,365
<b>TOTAL</b>	<b>\$108,850</b>	<b>\$114,466</b>

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

**Local Government Impact**

Overall, this bill increases workload and may increase costs for local governments. The bill increases workload for local law enforcement agencies in two ways. First, it requires agencies to develop an inventory of evidence that has not been tested and to submit this information to the CBI. Second, it requires agencies to participate in the development of and to comply with rules to be promulgated by DPS concerning the standards and timing for submission of evidence of alleged sexual assault in the future. As the impact of this change is dependent on rules that have not yet been developed, but will take into account input from agencies, it is not possible to determine the impact to local law enforcement agencies. In addition, costs may increase if a local government chooses to develop a plan to test backlog evidence within its possession. The fiscal note assumes that the costs of doing so are prohibitive and that local governments will instead submit backlog evidence to the CBI.

**State Appropriations**

For FY 2013-14, the Department of Public Safety requires an appropriation of \$13,934,124 General Fund and 9.0 FTE. Of this amount, \$3,090 should be reappropriated to the Department of Law. However, the bill only appropriates \$6,351,002 General Fund to the Department of Public Safety to fund the private testing of 4,234 backlog evidence kits in FY 2013-14. No other costs are included.

**Departments Contacted**

- |                |                |                    |
|----------------|----------------|--------------------|
| Corrections    | Counties       | District Attorneys |
| Human Services | Judicial       | Law                |
| Local Affairs  | Municipalities | Public Safety      |