



**Colorado  
Legislative  
Council  
Staff**

**HB16-1058**

**FINAL  
FISCAL NOTE**

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

**Drafting Number:** LLS 16-0246 **Date:** May 19, 2016  
**Prime Sponsor(s):** Rep. Willett; Fields **Bill Status:** Postponed Indefinitely  
 Sen. Newell; Cooke **Fiscal Analyst:** Kerry White (303-866-3469)

**BILL TOPIC:** MISUSE OF ELECTRONIC IMAGES BY A JUVENILE

<b>Fiscal Impact Summary</b>	<b>FY 2016-2017</b>	<b>FY 2017-2018</b>
<b>State Revenue</b> Cash Funds	Potential decrease. See State Revenue section.	
<b>State Expenditures</b> General Fund	Potential decrease. See State Expenditures section.	
<b>TABOR Impact</b>	Potential decrease. See TABOR Impact section.	
<b>FTE Position Change</b>		
<b>Appropriation Required:</b> None.		
<b>Future Year Impacts:</b> Ongoing potential revenue and expenditure decreases.		

**Summary of Legislation**

The bill creates the crime of misuse of electronic images by a juvenile, a class 2 misdemeanor. The offense occurs when a juvenile knowingly distributes, displays, publishes, or possesses a sexually explicit image of himself or herself, or of another juvenile who is within four years of age of the offender. It is an affirmative defense to the crime if the juvenile did not solicit, request, make, transmit, or distribute the image, and he or she took reasonable steps to destroy or delete the image or report receiving the image to law enforcement or a school official.

A juvenile charged with this crime may not also be charged with sexual exploitation of a child for the same image and criminal episode.

**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. While this bill creates a new crime, there are two existing criminal offenses which may be used to prosecute the conduct prohibited by HB16-1058.

**Sexual exploitation of a child.** Depending on the circumstances and number of prior offenses, sexual exploitation of a child (Section 18-6-403, C.R.S.) may be charged as a class 3, 4, or 5 felony. Over the past three years, there have been 119 convictions for this offense. Of this number, 12 were African American (9 male, 3 female); 5 were Hispanic (4 male, 1 female); 4 were other (2 male, 2 female); and 98 were Caucasian (81 male, 17 female). The fiscal note assumes that the majority of offenses charged as sexual exploitation of a child that could instead be charged under the new crime of misuse of electronic images by a juvenile are equivalent to a class 5 felony. The penalty for a class 5 felony is a term of incarceration in the Department of Corrections of between one and three years, a fine of between \$1,000 and \$100,000, or both.

**Criminal invasion of privacy.** Criminal invasion of privacy (Section 18-7-801, C.R.S.) is also a class 2 misdemeanor. Over the past three years, there were 18 convictions of this offense. This included 2 African American males, 3 undefined/other males, 1 Caucasian female, and 12 Caucasian males. The penalty for a class 2 misdemeanor is a term of incarceration in a county jail of 3 to 12 months, a fine of \$250 to \$1,000, or both.

## State Revenue

**Overall and beginning in FY 2016-17, the bill may reduce state cash fund revenue by a minimal amount.** The fiscal note assumes that the majority of cases involving the conduct contemplated by this bill are being charged under current law. To the extent the passage of this bill causes certain cases to be charged as a class 2 misdemeanor rather than as a felony, fine revenue may decrease. However, if those offenders are also sentenced to probation, revenue will increase. The fee for probation is currently assessed as \$50 per month.

## TABOR Impact

This bill may reduce state cash fund revenue from fines, which may reduce the amount of money required to be refunded under TABOR for FY 2017-18. TABOR refunds are paid out of the General Fund. TABOR refund obligations are not expected for FY 2016-17.

## State Expenditures

**Overall and beginning in FY 2016-17, this bill may reduce state General Fund expenditures by a minimal amount.** As noted above, the fiscal note assumes that most cases involving the misuse of electronic images by a juvenile are charged under current law.

**Judicial Department.** To the extent that this bill causes cases that are currently charged as a felony to be charged as a misdemeanor, costs for trial courts and representation by either the Office of the State Public Defender (OSPD) or Alternate Defense Counsel (ADC) will decrease and costs in probation may increase. To the extent that this bill allows for new case filings, workload and costs for trial courts, probation, OSPD and ADC may increase. If new guardians ad litem are appointed to represent juveniles, costs may also increase in the Office of the Child's Representative. Any such changes are anticipated to be minimal and will not require an adjustment in appropriations.

**Department of Corrections.** To the extent that this bill causes cases that are currently charged as a felony to be charged as a misdemeanor and those offenders would have been sentenced to the Department of Corrections (DOC), costs will decrease. Offenders placed in a private contract prison cost the state about \$59.90 per offender per day, including the current daily rate of \$56.02 and an estimated \$3.88 per offender per day for medical care provided by the DOC. The fiscal note assumes that cases that are currently charged as a felony are likely to continue to be charged as such, and, therefore, any reductions in costs are anticipated to be minimal. If substantive reductions in sentences to the DOC occur, the fiscal note assumes that adjustments in appropriations will be addressed through the annual budget process.

### **Local Government Impact**

This bill will affect local governments in several ways, as discussed below.

**Misdemeanor offenses in county courts.** First, the bill may increase workload for district attorneys to prosecute any new offenses under the bill. If the district attorneys are currently prosecuting some or all of these cases as felonies, workload may be reduced.

**County jail.** Second, to the extent that this bill increases misdemeanor convictions and offenders are sentenced to jail, costs will increase. Under current law, a court may sentence an offender to jail for a class 2 misdemeanor for a period of between 3 and 12 months. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. The cost to house an offender in county jails varies from about \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$52.74 to house state inmates. It is assumed that the impact of this bill will be minimal.

**Denver County Court.** If the bill results in new filings, an increase in workload for the Denver County Court, managed and funded by the City and County of Denver, will also occur. Probation services in the Denver County Courts may also experience a minimal increase in workload and revenue to supervise any new persons convicted under the bill, or those that are reclassified as a misdemeanor from a felony within the City and County of Denver.

### **Effective Date**

The bill was postponed indefinitely by the House Public Health Care and Human Services committee on April 25, 2016.

### **State and Local Government Contacts**

Counties	Corrections	District Attorneys
Human Services	Information Technology	Judicial
Sheriffs		