



Colorado Legislative Council Staff
STATE and LOCAL
FISCAL IMPACT

Drafting Number: LLS 06-0252
Prime Sponsor(s): Rep. McCluskey
Sen. Sandoval

Date: January 25, 2006
Bill Status: House Judiciary
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TITLE: CONCERNING CHILD EXPLOITATION OFFENSES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Fiscal Impact Summary		FY 2006/07	FY 2007/08
State Revenues Cash Funds - Fines Collection Cash Fund Cash Funds - Sex Offender Surcharge Fund		Potential increase up to \$10,000	Potential increase up to \$10,000
State Expenditures General Fund		\$542,846	\$703,724
FTE Position Change		0.4 FTE	0.4 FTE
Effective Date: July 1, 2006, and applies to offenses committed on or after that date.			
Appropriation Summary for FY 2006/07: Judicial Department: \$19,682 General Fund and 0.4 FTE Department of Corrections: See five-year appropriations table on page 3.			
Local Government Impact: Potential increase in county jail costs.			

Summary of Legislation

This bill creates two new felonies subject to an indeterminate sentence that could reach a maximum of an offender's lifetime: (1) internet luring of a child and (2) internet sexual exploitation of a child. The first felony is committed if a person communicates with a child through a computer network, whom they believe is less than 15 years old, for the purpose of enticing or luring the child to meet without the consent of the child's parent or guardian. Enticing a child to meet is a Class 5 felony, except it is Class 4 felony if the intent of the meeting is for sexual contact or sexual exploitation. The second felony is committed if a person uses a computer network to entice a child, who is under 15 years old, to expose or touch the child's own or another person's intimate parts while communicating via a computer network, or to observe the person's intimate parts while communicating via a computer network. This form of child sexual exploitation is a Class 4 felony. The bill also makes the possession of more than 20 different items of sexual exploitative material depicting children (photographs, videotapes, slides, etc.) a Class 4 felony for a first offense.

State Revenues

Under current law, individuals convicted of felonies may be required to pay fines of between \$1,000 and \$1,000,000, depending upon the class of offense committed. This bill creates a new Class 4 felony for which the court may impose a fine of between \$2,000 and \$500,000. To the degree that the court imposes additional fines for this new felony, the bill will generate additional revenue for the state. Any new fine revenue collected will be deposited into the Fines Collection Cash Fund.

In addition, any person convicted of a sex offense is required to pay a surcharge of between \$500 and \$3,000, depending on the class of offense. A person convicted of a Class 4 felony must pay \$1,000, which is deposited into the Sex Offender Surcharge Fund. However, the surcharge can be waived for offenders who are financially unable to pay. The fiscal note expects 10 new Class 4 convictions each year based on the bill's provisions, which will result in up to \$10,000 annually being deposited into the Sex Offender Surcharge Fund.

State Expenditures

Background. Under current law, the offenses created in this bill are in some cases already charged under another statute, such as enticement of a child (Section 18-3-305, C.R.S.) or the sexual exploitation of a child (Section 18-6-403, C.R.S.). The former is a Class 4 felony, although extenuating circumstances can elevate the crime to a Class 3 felony. The latter is a Class 3 felony, except that possession of sexually exploitative material depicting children is a Class 1 misdemeanor; with a second or subsequent offense charged as a Class 4 felony. In the past three years, the estimated number of felony convictions for these crimes has averaged 35 per year. About one-third of these were sentenced to the Department of Corrections, with the balance being sentenced to probation. In addition, in FY 2004-05, there were 20 Class 1 misdemeanor convictions for possession of sexual exploitative material.

The bill is expected to produce a small increase in the number of felony convictions because it allows local district attorneys to charge this crime specifically rather than under a different statute in which there is not a clear fit. This is projected to increase both prison admissions and the number of people on probation.

Department of Corrections. The bill is expected to increase department expenditures by \$523,164 in FY 2006-07 and \$684,042 in FY 2007-08, as indicated in Table 1. For the next five years, the bill will increase department expenditures by a total of \$4.2 million. The fiscal note assumes there will be 15 new felony filings each year for the crimes specified in the bill, resulting in 10 new convictions with 3 individuals sentenced to DOC as Class 4 felons. Furthermore, the elevation of a misdemeanor offense to a Class 4 felony will result in an estimated 3 additional individuals sentenced to DOC.

Five-Year Fiscal Impact on Correctional Facilities

The adoption of this bill will result in a net increase in periods of imprisonment in a state correctional facility. Section 2-2-703, C.R.S., requires that such bills cannot be passed without five years of appropriations for prison bed construction and operating costs. Construction costs are estimated to be \$87,194 per inmate bed. Operating costs are \$73.46 per bed per day or \$26,813 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.

However, in the event state correctional facilities are at capacity, Sections 17-1-102, 104.9, and 105.5, C.R.S., authorize the Department of Corrections to permanently place state inmates classified as medium custody and below in private contract prisons. The state pays private prisons at a rate of \$50.28 per bed per day or \$18,352 per bed per year.

Table 1. Five-Year Fiscal Impact On Correctional Facilities

Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2006/07	0.0	\$523,164	\$0	\$523,164
FY 2007/08	6.0	\$523,164	\$160,878	\$684,042
FY 2008/09	12.0	\$523,164	\$321,756	\$844,920
FY 2009/10	18.0	\$523,164	\$482,634	\$1,005,798
FY 2010/11	24.0	\$523,164	\$643,512	\$1,166,676
Total		\$2,615,820	\$1,608,780	\$4,224,600

Judicial Department. The bill is expected to increase departmental expenditures for probation services by \$19,682 annually. An estimated 15 new felony filings are expected to generate 7 new sentences to probation. In addition, the possession of sexually exploitative material is expected to elevate 10 Class 1 misdemeanors to Class 4 felonies, of which 7 are expected to require probation services. These 14 new cases will require placement in sex offender intensive supervision probation (SOISP). The SOISP program operates with a fixed caseload of 25 sex offenders for each probation officer. The regular sex offender caseload operates with 35 sex offenders for each probation officer. Since 7 probation cases are anticipated to increase from a Class 1 misdemeanor to a Class 4 felony, there will be a corresponding decrease in the need for regular sex offender probation service. The net increase in probation staffing is therefore 0.4 FTE each year (14/25 - 7/35), which will cost the department \$19,682 each year.

Department of Human Services, Division of Youth Corrections. The bill creates a new Class 4 felony that is expected to increase the number of adult convictions. To the degree that the bill also increases the number of youth committed to the Division of Youth Corrections, the division will require additional residential and treatment facilities. The fiscal note did not estimate the

increase in youth commitments resulting from the bill; the division will have to monitor the bill's effects and address any impacts through the annual budget appropriation process.

Other State Impacts

Referendum C provided that the calculation of future caps on retained revenue after FY 2009-10 will be based on the highest amount of revenue attained during the previous five years. Passage of this bill will increase the highest amount of revenue during the five-year period.

Local Government Impact

Because the bill increases the number of offenders who are sentenced to the Department of Corrections, the bill may result in some spillover of offenders into the county jail system. To the degree that this occurs, it will create additional costs for counties. The fiscal note has not estimated the amount of this spillover.

State Appropriations

For FY 2006-07, the bill will require the following General Fund appropriations:

Department of Corrections: \$523,164 for capital construction costs; and
Judicial Department: \$19,682 and 0.4 FTE.

Departments Contacted

Judicial Corrections Public Safety Human Services