

**JBC STAFF FISCAL ANALYSIS  
SENATE APPROPRIATIONS COMMITTEE**

CONCERNING CHILD EXPLOITATION OFFENSES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Prime Sponsors:      Representative McCluskey  
                            Senator Sandoval

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**Summary of Amendments Made to the Bill After the 04/17/06 Legislative Council Staff Revised Fiscal Note was Prepared (Amended by the House on Second Reading on 04/20/06, and by the Senate Judiciary Committee on 04/26/06)**

***House Second Reading Amendments***

The amendment creates Article 2.7, "Internet Evidence for Law Enforcement Investigations," which contains the following provisions:

- a. Defines "court order" and "internet access provider."
- b. Requires an internet access provider to take all necessary steps to preserve records and other evidence in its possession upon the request of a law enforcement agency, pending the issuance of a court order or other legal process; stipulates how long such records shall be retained and the time frame for providing such records.
- c. Requires an internet access provider to provide the National Center for Missing and Exploited Children with data on a subscriber involved in a report or instance of apparent child pornography.
- d. Requires an internet access provider with more than 15,000 subscribers who are Colorado residents to provide, upon request, training materials to law enforcement agencies in the state regarding best practices for investigating internet-related crimes involving sexual exploitation of children and related information.
- e. Establishes that an internet access provider that fails to comply with the provisions of the article shall be liable for a civil penalty of up to \$2,500 for each incidence of noncompliance. The penalty may be raised to up to \$10,000 for a third and subsequent incidence of noncompliance in a twelve month period. The article authorizes the State Attorney General to bring suit in court to enforce the provisions of the article.

- f. Exempts an internet access provider from liability for noncompliance if it is unable to comply due to a bona fide technical failure. The article also establishes that failure to comply with the article's requirements does not result in further civil liability.
- g. Sets the effective date for this article as October 1, 2006; the effective date for the rest of the bill remains July 1, 2006.

*This amendment may change the fiscal impact of the bill. See "Reason for the Update" below.*

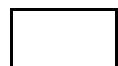
***Senate Judiciary Committee Amendments***

The Senate Judiciary Committee amendment makes the following changes to the bill:

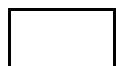
- a. Strikes language that exempted from the internet luring of a child provisions someone who reasonably believes that their conduct was necessary to protect a child.
- b. Redefines "internet access provider."
- c. Clarifies the following provisions: the time frame within which an internet access provider must provide data to a law enforcement agency; the ability of law enforcement to request such data; and the requirement for an internet access provider to provide data to the National Center for Missing and Exploited Children. The amendment also makes other miscellaneous technical adjustments.

*This amendment does not affect the fiscal impact of the bill.*

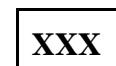
**JBC Staff Concurrence with Legislative Council Staff Fiscal Note**



Concurs



Does Not Concur



Updated Analysis

**Reason for the Update**

The House Second Reading amendments create a new civil penalty to be assessed against an internet access provider that fails to comply with the provisions of Article 2.7, described above. This provision may generate some additional fine revenue which would be deposited into the Fines Collection Cash Fund.

The House Second Reading amendments also authorize the State Attorney General to bring suit in court to enforce the provisions of Article 2.7. However, this provision will likely result in few new cases each year. Therefore, it is anticipated that the Department of Law and the Judicial Department will be able to absorb the impact of these changes.

Legislative Council staff agrees with this updated analysis.

**Amendments/Appropriation Status**

The bill contains an appropriation clause that makes the necessary transfers and statutory appropriations for the felony as estimated in the Legislative Council Staff Revised Fiscal Note dated April 17, 2006. The appropriations clause does the following:

1. Appropriates \$523,164 from the Capital Construction Fund to the Corrections Expansion Reserve in each year from FY 2006-07 through FY 2010-11 totaling \$2,615,820.
2. Makes statutory appropriations to the Department of Corrections in the amounts of a cumulative \$1,608,780 General Fund over the four-year period from FY 2007-08 through FY 2010-11;
3. Transfers \$523,164 from the General Fund to the Capital Construction Fund in each year from FY 2006-07 through FY 2010-11 totaling \$523,164; and
4. Appropriates \$19,682 and 0.4 FTE to the Judicial Department in FY 2006-07.

This amendment is summarized in the following table:

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HB06-1011  
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<b>Summary of Appropriations to the Department of Corrections in J.001</b>				
<b>Fiscal Year</b>	<b>Section 9 of H.B. 06-1011 (as amended by the Judiciary Committee)</b>			<b>Section 10 of H.B. 06-1011 (as amended by the Judiciary Committee)</b>
	<b>Appropriations from the Capital Construction Fund to the Corrections Expansion Reserve</b>	<b>General Fund Operating Appropriations</b>	<b>Total Approp.</b>	<b>General Fund Transfers to the Capital Construction Fund</b>
FY 2006-07	\$523,164	\$0	\$523,164	\$523,164
FY 2007-08	523,164	160,878	684,042	523,164
FY 2008-09	523,164	321,756	844,920	523,164
FY 2009-10	523,164	482,634	1,005,798	523,164
FY 2010-11	<u>523,164</u>	<u>643,512</u>	<u>1,166,676</u>	<u>523,164</u>
<b>Total</b>	<b>\$2,615,820</b>	<b>\$1,608,780</b>	<b>\$4,224,600</b>	<b>\$2,615,820</b>

\* In addition to the amounts shown in the table, J.001 appropriates \$19,682 General Fund and 0.4 FTE to the Judicial Department in FY 2006-07.

### **Sponsor Amendments**

Staff is not aware of any sponsor amendments.

### **Points to Consider**

Based on the March 2006 Legislative Council Staff revenue forecast, there will be enough revenue to fund a partial diversion to the Highway Users Trust Fund (HUTF) under the provisions of S.B. 97-1 beginning in FY 2006-07. Construction costs for new prison beds are funded outside of the 6.0 percent appropriations limit. Therefore, the increased expenditure needed to fund this element of the bill would reduce the amount of money available for diversion to the HUTF by an equal amount. In FY 2006-07, this amount equals \$523,164.