

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 14-0998	Date: April 21, 2014
Prime Sponsor(s): Rep. Stephens; Pabon	Bill Status: House Judiciary
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SHORT TITLE: POSTING INTIMATE PHOTOS ON THE INTERNET

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue	<u>at least \$5,000</u>	<u>at least \$5,000</u>
Cash Funds	at least \$5,000	at least \$5,000
State Expenditures		
General Fund	Minimal workload increase.	
FTE Position Change		
Appropriation Required: None.		

* This summary shows changes from current law under the bill for each fiscal year.

Summary of Legislation

This bill creates the new crime of posting a private image, which is a class 1 misdemeanor. To commit the crime, a person must post online through the use of social media an intimate photo or video taken of a person over the age of 18 without his or her consent and intend to cause serious emotional distress to the victim.

The photo must have been posted after the victim communicated to the actor an expectation that the image would remain private. In addition to any other sentence imposed, the court is required to levy a minimum fine of \$10,000 for an offense. If a person is convicted of this offense, the court is to order that the offender or entity remove the photos from where they are posted or published.

The bill sets forth a process and requirements for sealing of criminal conviction records when the offender has completed his or her sentence, including payment of any fine, and has not been convicted of another criminal offense for at least five years after completion of the sentence.

State Revenue

Beginning in FY 2014-15, this bill will increase state revenue by at least \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. While the fine penalty for a class 1 misdemeanor is \$500 to \$5,000, the bill requires the court to impose a minimum fine of \$10,000. Based on existing class 1 misdemeanor offenses, the fiscal note assumes that 10 percent of persons convicted of this crime will be determined indigent and unable to pay the fine. For each year's convictions, for which the fiscal note assumes there will be at least one, fines will be paid incrementally over time.

State Expenditures

Beginning in FY 2014-15, this bill will increase workload for Judicial Department agencies. Workload could increase for trial courts, the Office of the State Public Defender, and the Office of the Alternate Defense Counsel to hear and defend new cases. To the extent that persons are convicted and sentenced to probation, workload for the Probation Division may also increase. Based on filings for the crime of invasion of privacy for sexual gratification, which is comparable to the crime created under this bill, the fiscal note assumes that filings and increases in workload under the bill can be accomplished without an increase in state appropriations.

Local Government Impact

This bill impacts local governments by creating the new crime of posting a private image, which is a class 1 misdemeanor. In addition to the mandatory \$10,000 fine, the penalty for this class 1 misdemeanor may include 6 to 18 months in a county jail. Because the courts have the discretion of incarceration for this crime, 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 at a daily rate of \$51.45 to house state inmates. It is assumed that the impact of this bill will be minimal. The bill may also result in increased revenue, and trial court and probation workload for offenses committed and prosecuted in the City and County of Denver, which is separate from the state court system.

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. The offense created under HB14-1378 is most comparable to the existing crime of invasion of privacy for sexual gratification, which is knowingly observing or taking a photograph of another person's intimate parts without that person's consent, in a situation where the person has a reasonable expectation of privacy. This crime is also a class 1 misdemeanor. Over the past three years, there were 57 filings and 22 convictions of this offense. No gender or minority status data for victims are available. Of the 22 offenders, all were male and 19 were Caucasian, 1 was African American, 1 was Asian, and 1 was not classified. Due to the low number of filings and convictions per year, the fiscal note assumes that filings and convictions for the new crime of posting a private image will be minimal.

Effective Date

The bill takes effect on July 1, 2014, and applies to offenses committed on or after this date.

State and Local Government Contacts

Corrections
Judicial

Counties
Municipalities

District Attorneys
Sheriffs