

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
REVISED FISCAL IMPACT**

(replaces fiscal note dated April 21, 2014)

Drafting Number: LLS 14-0998 **Date:** April 29, 2014
Prime Sponsor(s): Rep. Stephens; Pabon **Bill Status:** Senate Judiciary
 Sen. King; Hodge **Fiscal Analyst:** Kerry White (303-866-3469)

SHORT TITLE: POSTING INTIMATE PHOTOS ON THE INTERNET

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

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

Summary of Legislation

This **reengrossed** 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, to extort the victim, or to make a pecuniary gain.

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 up to \$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.

The bill allows a person whose private images have been posted to bring a civil action against the person who caused the posting. The court may provide injunctive relief, the greater of \$10,000 or actual damages incurred as a result of the posting of the private images, exemplary damages, and reasonable attorney's fees and costs. No liability is imposed on the provider of an interactive computer service, an information service, or a telecommunications service for content provided by another person.

State Revenue

Beginning in FY 2014-15, this bill will increase state revenue by at least \$5,000 per year, as described below.

Criminal fines. 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 fine of up to \$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.

Filing fees. A minimal amount of cash fund revenue to the Judicial Stabilization Cash Fund will be collected from private parties who file pleadings in civil court or petition the court to seal records. For example, a plaintiff pays \$224 with the filing of a complaint in district court, and the defendant pays at least \$158 with the filing of an answer.

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 criminal and civil cases. To the extent that persons are convicted and sentenced to probation, workload for the Probation Division may also increase. Workload may also increase for the courts to process petitions for the sealing of records. 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. The bill has alternate sections for criminal record sealing, depending on whether SB14-206 becomes law. If SB14-206 takes effect, Section 3 applies. If SB14-206 does not take effect, Section 2 will apply.

State and Local Government Contacts

Corrections
Judicial

Counties
Municipalities

District Attorneys
Sheriffs