



Colorado
Legislative
Council
Staff

HB17-1302

REVISED
FISCAL NOTE

(replaces fiscal note dated March 31, 2017)

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

Drafting Number: LLS 17-0184

Date: April 27, 2017

Prime Sponsor(s): Rep. Lee; Willett
Sen. Gardner; Fields

Bill Status: Senate Judiciary

Fiscal Analyst: Amanda Hayden (303-866-4918)

BILL TOPIC: JUVENILE SEXTING CRIME

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue	<\$10,000	<\$10,000
General Fund	<5,000	<5,000
Cash Funds	<5,000	<5,000
State Expenditures	Minimal net increase.	
General Fund	Minimal net increase.	
TABOR Impact	<\$5,000	<\$5,000
Appropriation Required: None.		
Future Year Impacts: Ongoing minimal revenue and expenditure increase.		

Summary of Legislation

The **reengrossed** bill creates the crimes of posting, possessing, or exchanging private images by a juvenile. It amends the crime of sexual exploitation of a child, a class 3, 4, or 5 felony, by noting that if a juvenile's conduct is limited to the elements of the petty offense of possession of a private image by a juvenile or the elements of the civil infraction of exchange of a private image by a juvenile, then he or she is not subject to prosecution for a felony. The bill states that a juvenile charged with posting or possessing private images cannot also be charged with sexual exploitation of a child for the same images.

Posting a private image. A person under 18 commits this offense by knowingly distributing, displaying, or publishing a sexually explicit image of another juvenile who is at least 14 years old or is less than 4 years younger than the juvenile without the depicted juvenile's consent, when the recipient did not solicit or request the image and suffered emotional distress, or when the person knew or should have known that the depicted juvenile had a reasonable expectation that the image would remain private. It is also an offense if a juvenile knowingly distributes, displays, or publishes to the view of another person who is at least 14 or less than 4 years younger than the juvenile a sexually explicit image of him- or herself when the recipient did not solicit or request the image and suffered emotional distress. This crime is a class 2 misdemeanor, unless one of the following conditions are met, in which case it is a class 1 misdemeanor:

- the juvenile committed the offense with the intent to coerce, intimidate, threaten, harass, or otherwise cause emotional distress to the depicted juvenile;
- the juvenile had previously posted a private image and completed a diversion program for the act or had prior adjudication for posting a private image; or
- the juvenile distributed, displayed, or published three or more images that depicted separate juveniles.

Possessing a private image. A juvenile commits this offense if he or she knowingly possesses a sexually explicit digital image of another juvenile who is at least 14 years old or less than 4 years younger than the juvenile without the depicted juvenile's consent, unless the person took reasonable steps to either destroy, delete, or report the image to law enforcement or a school official within 72 hours of receiving it. This crime is a class 2 misdemeanor if the unsolicited possessor of the image possessed ten or more separate images that depicted three or more separate juveniles. In all other cases, it is a petty offense.

Exchange of a private image. A juvenile commits this offense if he or she:

- knowingly sends a sexually explicit image or images of him- or herself to another person at least 14 years old or less than 4 years younger than the juvenile, the image or images depict only the sender, and the sender reasonably believed that the recipient had agreed to receive the image; or
- knowingly possesses a sexually explicit image or images of another person who is at least 14 years old or less than 4 years younger than the juvenile, the image or images depict only the sender, and the juvenile reasonably believed that the depicted juvenile agreed to send the image.

This offense is a civil infraction punishable by participation in a program designed by the school safety resource center or other appropriate program addressing the risks and consequences of exchanging private images or a fine of up to \$50. If the juvenile fails to appear in response to a civil infraction citation, to complete the required class, or pay the fee, the court may issue an order to show cause requiring the juvenile's appearance in court and may impose additional age-appropriate penalties but may not issue a warrant for the juvenile's arrest or impose a penalty of incarceration.

It is an affirmative defense to all three offenses if a juvenile is coerced, threatened, or intimidated into distributing, displaying, publishing, possessing, or exchanging a sexually explicit image of a person under 18.

Sentencing options and court records. The court must order an offender be assessed for participation in restorative justice practices, if available, and must inform the victim about the possibility of such practices. District attorneys are encouraged to develop diversion programs for juveniles and offer the programs to first time offenders. The court must order all records related to a juvenile delinquency case of one of these offenses expunged within 42 days of the completion of the sentence or other alternative program.

School Safety Resource Center. The bill directs the School Safety Resource Center (SSRC) within the Department of Public Safety to develop and make available a model program by June 1, 2018, regarding the dangers and consequences of sending sexually explicit digital images. The program must inform students that they can avoid adjudication as a juvenile delinquent if they take steps to either destroy, delete, or report a sexually explicit image within 72 hours.

Post-enactment review. The bill requires a post-enactment review of the implementation of the act two years after it becomes law.

Background and Comparable Crime

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. Under current law, juveniles sending sexually explicit images of themselves or other juveniles may be charged with two crimes, as described below.

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. The penalty for a first offense of sexual exploitation of a child by means of possession of sexually exploitative image, the elements of this crime most similar to those prohibited under the bill, is a class 5 felony. The penalty for a class 5 felony is a term of incarceration in the Department of Corrections (DOC) of between one and three years, a fine of between \$1,000 and \$100,000, or both. Over the past three years, there have been 28 juvenile delinquency adjudicated guilty for this crime. Of these, 23 were Caucasian, 2 were African American, 2 were Hispanic, and 1 was classified as other; all were male.

Criminal invasion of privacy. Criminal invasion of privacy (Section 18-7-801, C.R.S.) is a class 2 misdemeanor. 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. Over the past three years, there have been 15 adjudications in juvenile delinquency cases for this crime. Of these 10 were Caucasian, 2 were African American, 2 were classified as other, and 1 was Hispanic; 13 were male and 2 were female.

State Revenue

Beginning in FY 2017-18, this bill may increase state cash fund revenue by a minimal amount.

Criminal fines. This bill may increase state revenue by a minimal amount, credited to the Fines Collection Cash Fund in the Judicial Department. The fiscal note assumes that many of the cases involving the conduct contemplated by this bill are not being charged under current law. If misdemeanor or petty offense convictions increase as a result of the bill, fine revenue may increase. The fine penalty for a class 2 misdemeanor is \$250 to \$1,000 and for a class 1 petty offense, not more than \$500. To the extent the passage of this bill causes certain cases to be charged as a class 2 misdemeanor or a class 1 petty offense rather than as a felony, fine revenue may decrease. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, based on the low number of criminal fines imposed in 2016, the fiscal note assumes that any revenue increase is likely to be minimal.

Court and administrative fees. This bill may also increase state fee revenue by a minimal amount, including the \$50 per offender per month probation supervision fee. Some fee revenue is shared with local governments; please refer to the Local Government Impact section for additional information.

Civil fine revenue. The bill may increase state General Fund revenue by a minimal amount from the collection of the \$50 civil penalty assessed for exchange of a private image.

TABOR Impact

This bill is expected to increase state cash fund revenue from fines and fees, which will increase the amount of money required to be refunded under TABOR for FY 2017-18 and FY 2018-19. TABOR refunds are paid out of the General Fund. TABOR refund obligations are not expected for FY 2016-17. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount. Civil penalty revenue is TABOR-exempt.

State Expenditures

Overall and beginning in FY 2017-18, this bill may increase and decrease workload and state General Fund expenditures by a minimal amount in the Judicial Department. It may also decrease state expenditures in the Department of Human Services. It increases workload by a minimal amount in the Department of Public Safety and for legislative service agencies. Although the bill may go into effect in the current FY 2016-17, no impact is expected until FY 2017-18.

Judicial Department. To the extent that this bill results in new case filings, workload and costs for trial courts, probation, the Office of the State Public Defender (OSPD), and Office of the Alternate Defense Counsel (OADC) will increase. If new guardians ad litem are appointed to represent juveniles, costs may also increase in the Office of the Child's Representative. If the bill causes cases that are currently charged as felonies to be charged as misdemeanors or petty offenses, costs and workload for trial courts and either OSPD or OADC will decrease. Workload will also increase to expunge juvenile delinquency records. Any changes are anticipated to be minimal and will not require an adjustment in appropriations for any agency in the Judicial Department.

Department of Human Services. If the bill results in new filings against juveniles and new sentences to the Division of Youth Corrections (DYC), costs may increase. Should cases that are currently charged as felonies be adjudicated as misdemeanors or petty offenses, sentences to DYC may decrease, reducing costs. Given the small number of cases filed over the last three years, the fiscal note assumes that any change will be minimal and will not require an adjustment in appropriations. Should the number of juveniles detained or committed to DYC facilities change significantly as a result of the bill, the fiscal note assumes that adjustments in appropriations will be requested through the annual budget process.

Department of Public Safety (DPS). The bill increases workload for the SSRC in DPS by a minimal amount. The SSRC is required to develop a curriculum by June 1, 2018, regarding the dangers and consequences of sending sexually explicit digital images. This increase in workload can be accomplished with existing appropriations.

Legislative service agencies. In FY 2019-20, the bill increases workload for the Office of Legislative Legal Services, Legislative Council Staff, and the Joint Budget Committee Staff by a minimal amount to conduct a post-enactment review. No increase in appropriations for these agencies is required.

Local Government Impact

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

Court and administrative fees. Similar to the state, court and administrative fee revenue will increase. In the City and County of Denver, probation fee revenue may increase by \$50 per month, per offender. Revenue is also anticipated to increase by a minimal amount as a result of any court and administrative fees shared with the state.

District attorneys. The bill may increase workload for district attorneys to prosecute any new misdemeanor or petty offenses under the bill; however, to the extent that previous felony cases become misdemeanors or petty offenses, workload will decrease.

Denver County revenue and expenditures. This bill may increase revenue by a minimal amount for the Denver County Court, managed and funded by the City and County of Denver, for any new misdemeanor or petty offense cases. The fine penalty for a class 2 misdemeanor is \$250 to \$1,000 and for a class 1 petty offense, not more than \$500. The bill may also result in an increase in workload for the Denver County Court. The court may try additional misdemeanor or petty offense cases under the bill or cases that would have previously been charged as a felony. Probation services in the Denver County Court may also experience a minimal increase in workload to supervise persons convicted under the bill.

Effective Date

The bill takes effect upon signature by the Governor, or upon becoming law without his signature.

State and Local Government Contacts

Corrections
Information Technology
Sheriffs

Counties
Judicial

Human Services
Public Safety