

**JBC STAFF FISCAL ANALYSIS  
HOUSE APPROPRIATIONS COMMITTEE**

CONCERNING ENHANCING THE ENFORCEMENT OF CRIMES OF SEXUAL EXPLOITATION OF A CHILD.

Prime Sponsors: Reps. Carver and Roberts  
Sens. Gardner and Fields

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**Appropriation Items of Note**

**Appropriation Required, Amendment in Packet**

**General Fund/TABOR Impact**

**Fiscal Impact of Bill as Amended to Date**

The most recent Legislative Council Staff Revised Fiscal Note (attached) reflects the fiscal impact of the bill as of 02/11/20.

	<b>No Change:</b> Attached LCS Fiscal Note accurately reflects the fiscal impact of the bill
<b>XXX</b>	<b>Update:</b> Fiscal impact has changed due to <i>new information or technical issues</i>
	<b>Update:</b> Fiscal impact has changed due to <i>amendment adopted</i> after LCS Fiscal Note was prepared
	<b>Non-Concurrence:</b> JBC Staff and Legislative Council Staff disagree about the fiscal impact of the bill

JBC staff and Legislative Council Staff agree that the 02/11/20 Legislative Council Staff Revised Fiscal Note ("the Fiscal Note") should be updated to fix an unrealistic assumption in the Fiscal Note. Page 3 of the Fiscal Note assumes that four sentences to the Department of Corrections (DOC) will be altered each year after the bill goes into effect; specifically, the Fiscal Note assumes the bill will cause four offenders who would otherwise be sentenced to the DOC for sexual exploitation of a child to be sentenced to the DOC for sexual exploitation of a child *as an extraordinary risk crime*. One of the four offenders is assumed to be sentenced for a class 6 felony, one for a felony 5, one for a felony 4, and one for a felony 3. Based on Division of Criminal Justice (DCJ) data concerning average length of stay for DOC inmates, the Fiscal Note assumes that three of these four offenders will remain in DOC for *longer* terms due to passage of this bill, however, due to an anomaly in the DCJ data, the Fiscal Note assumes that the class 5 felon will stay in DOC for a *shorter* term, which is unrealistic. Correcting this data anomaly changes Table 4 of the Fiscal Note to the following table, which contains increased costs in the bill's 3rd, 4th, and 5th years.

**Revised Table 4  
Prison and Parole Costs Under HB 20-1120**

<b>Fiscal Year</b>	<b>ADP Impact*</b>	<b>Parole Impact</b>	<b>Operating Cost</b>
FY 2020-21	-	-	-
FY 2021-22	0.17	-0.17	\$6,226
FY 2022-23	0.17	0.02	7,344
FY 2023-24	0.72	-0.53	27,770
FY 2024-25	1.02	-0.76	39,231
		<b>Total Cost</b>	<b>\$80,571</b>

\*ADP is the average daily prison population.

**Amendments in This Packet for Consideration by Appropriations Committee**

<b>Amendment</b>	<b>Description</b>
J.001	Staff-prepared appropriation amendment

**Current Appropriations Clause in Bill**

Section 2-2-703, C.R.S., requires this bill to include an appropriation clause unless the Committee instead adds a clause to the bill declaring that it is an exception to the rules of that section. Presumably this would reflect the Committee's decision that the 5-year costs are insignificant. A decision not to include a 5-year appropriation may set a precedent for other criminal sentencing bills that come to the Committee this session.

**Description of Amendments in This Packet**

**J.001** Staff has prepared amendment **J.001** (attached), which adds a five year clause to the bill that appropriates a total of \$80,571 General Fund to the Department of Corrections for the increased DOC operating expenses that will result from the passage of this bill during fiscal years 2021-22 through 2024-25. This statutory appropriation corresponds to the costs shown in *Revised Table 4* above and is consistent with Section 2-2-703, C.R.S., which is reproduced in the *Points to Consider* portion of this document.

J.001 also contains a \$636 General Fund appropriation to the Judicial Department for FY 2020-21, which corresponds to the appropriation indicated in the Fiscal Note.

For reasons discussed in the *Points to Consider* portion of this document, staff does not recommend a statutory capital-construction appropriation pursuant to Section 2-2-703, C.R.S.

**Points to Consider***Statutory requirement for 5-year appropriations:*

**Section 2-2-703. General assembly - bills which result in a net increase in periods of imprisonment in state correctional facilities - funding must be provided in the bill.** On and after July 1, 1991, a bill may not be passed by the general assembly which would result in a net increase in periods of imprisonment in state correctional facilities unless, in such bill, there is an appropriation of money which is sufficient to cover any increased capital construction costs, any increased operating costs, and increased parole costs which are the result of such bill for the department of corrections in each of the first five years following the effective date of the bill. Money sufficient to cover such increased capital construction costs and increased operating costs for the first five fiscal years following the effective date of the bill must be estimated by the appropriations committee, and after consideration of such estimate the general assembly shall make a determination as to the amount of money sufficient to cover the costs, and such money must be appropriated in the bill in the form of a statutory appropriation from the general fund in the years affected. Any such bill which is passed on or after July 1, 1991, which is silent as to whether it is intended to be an exception to this section, shall not be deemed to be such an exception. Any bill which is enacted which is intended to be an exception to this section must expressly state such exception in such bill.

*No Capital Appropriation Recommended:*

Section 2-2-703, C.R.S., requires bills like this one, which increase periods of imprisonment, to include an appropriation of "money sufficient to cover... increased capital construction costs" that arise during the bill's first five fiscal years. The DCJ December 2019 population forecast predicts that the DOC's male in-prison population will exceed the capacity of its state and private prisons in FY 2024-25, which is the last year covered in *Revised Table 4* above. If this forecast proves correct, something will have to be done in FY 2024-25 to house the additional offenders. As the Fiscal Note observes, the average cost per bed for new prison construction is \$178,471. However, Staff does not recommend that the Committee include a statutory FY 2024-25 capital appropriation of \$178,471 for one bed in this bill for two reasons:

1. If the male in-prison population exceeds the DOC's capacity, the State may decide, as an alternative to new-prison construction, to lease a currently empty in-state private prison, such as the prison in Hudson or the prison in Walsenburg. Capital expenditures will probably be required to bring these prisons up to current DOC standards, but it is difficult to project the size of these expenditures. However, the expenditure per bed will surely be much lower than the per bed cost of new prison construction. If a private prison is leased, then operating costs per bed in a further update of *Revised Table 4* would increase by a proportionate share of the lease expense.

## **HB20-1120**

## **JBC Staff Analysis**

2. Past forecasts of the state's prison population several years in the future have often proved inaccurate. Based on past inaccuracy, Colorado's prison population could exceed state capacity before or after FY 2024-25, or perhaps never.

### *Future Fiscal Impact:*

Although this bill does not require a General Fund appropriation for FY 2020-21, it requires General Fund appropriations totaling \$80,571 for FY 2021-22 through FY 2024-25.