



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

HB 19-1030

FISCAL NOTE

Drafting Number: LLS 19-0713 Date: January 29, 2019
Prime Sponsors: Rep. Soper; Roberts; Sen. Rankin Bill Status: House Judiciary
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Bill Topic: UNLAWFUL ELECTRONIC SEXUAL COMMUNICATION

- Summary of Fiscal Impact: State Revenue (minimal), State Expenditure, State Transfer, TABOR Refund (minimal), Local Government, Statutory Public Entity

This bill creates the crime of unlawful sexual communication. This bill will potentially increase state and local revenue and expenditures on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Summary of Legislation

This bill creates the crime of unlawful sexual communication, which is a class 6 felony. This bill prohibits a person who is in a position of trust with respect to a child from communicating through various electronic means with a child under the age of 18 years old to describe explicit sexual conduct.

Comparable Crime Analysis

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 an existing crime. The following sections outline data on crimes that are comparable to the offense in this bill and discuss assumptions on future rates of criminal convictions under the bill.

Prior conviction data. This bill creates the new offense of unlawful electronic sexual communication, a class 6 felony. To form an estimate on the prevalence of this new crime, the fiscal note analyzed the existing felony offense of internet sexual exploitation of a child as a comparable crime. From 2016 to 2018, 41 individuals have been convicted and sentenced for this existing offense. Of the persons convicted, all 41 were male. Demographically, 36 were White, 2 were Black/African American, 2 were Hispanic, and 1 was classified as "Other".

**Assumptions.** This analysis assumes that there will be less than five criminal case filings per year for the offense created under the bill and that one offender per year has the potential to be convicted and sentenced to Department of Corrections. The average DOC length of stay for a class 6 felony sex offense is 10.85 months with an average parole length of stay of 9.23 months once he or she is released from prison. However, because the offense created by this bill is a class 6 felony, the use of an alternative sentence such as probation or community corrections is as likely as a sentence to DOC. Additionally, the new offense of unlawful electronic sexual communication may be charged in addition to an existing crime, such as internet sexual exploitation of a child. For this reason, the new offense may result in additional time served on top of the existing offense, time being served for only the more serious offense, or an extended amount of time served on probation. Sentencing decisions are at the discretion of the court. Therefore, the exact DOC and parole impacts are unknown, but assumed to be minimal.

Visit [leg.colorado.gov/fiscalnotes](http://leg.colorado.gov/fiscalnotes) for more information about criminal justice costs in fiscal notes.

## **State Revenue**

Beginning in FY 2019-20, this bill increases criminal fines and court fees by minimal amounts as described below.

**Criminal fines and court fees.** Since the bill creates a class 6 felony for unlawful electronic sexual communications, the bill will increase state revenue from criminal fines and court fees by a minimal amount beginning in FY 2019-2020, credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. The fine penalty for a class 6 felony is \$1,000 to \$100,000. Additionally, court fees may be imposed on a case-by-case basis for a variety of court-related costs, such as probation supervision, drug surcharges, or late fees. Because the courts have the discretion of incarceration, imposing a fine, or both, a precise state revenue impact cannot be determined. Criminal fine and court fee revenue is subject to TABOR.

## **State Expenditures**

This bill increases workload and costs in the Judicial Department and agencies that provide representation to indigent persons beginning in FY 2019-20. Beginning at some point in the future, the bill may also increase state General Fund expenditures in the Department of Corrections (DOC). These impacts are discussed below .

**Judicial Department.** This bill will increase costs and workload for the trial courts in the Judicial Department to process additional criminal case filings and to the Division of Probation. Costs and workload may also increase in the agencies that provide representation to indigent persons, including the Office of the State Public Defender and the Office of Alternate Defense Council. To the extent that individuals are sentenced to probation, workload will also increase. Overall, it is assumed that this increase in workload can be accomplished within existing appropriations. Should a change in funding be required for any agency or division with the Judicial Department, the fiscal note assumes it will be addressed through the annual budget process.

**Department of Corrections.** Based on the assumptions provided in the Comparable Crime Analysis section, this bill may increase prison operating, capital construction, and parole costs for the DOC beginning in FY2019-20. To the extent that additional offenders are sentenced to DOC for unlawful electronic sexual communication or offenders under current law are sentenced to a longer term in DOC, future operating and parole costs will increase. The fiscal note assumes that any increase in appropriations will be requested through the annual budget process, if required.

**TABOR refunds.** The bill is expected to minimally increase state General Fund obligations for TABOR refunds in FY 2019-20. Under current law and the Legislative Council Staff December 2018 forecast, the bill will correspondingly increase the amount refunded to taxpayers via sales tax refunds on income tax returns for tax year 2020. The state is not expected to collect a TABOR surplus in FY 2020-21.

## Local Government

This bill will increase costs and workload for district attorneys to prosecute offenses under the bill on an ongoing basis. Any increase in workload for district attorneys is expected to be minimal.

## Effective Date

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

## State and Local Government Contacts

Corrections  
Information Technology

District Attorneys  
Judicial