



Legislative
Council Staff

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FISCAL NOTE

Drafting Number:	LLS 20-0243	Date:	February 3, 2020
Prime Sponsors:	Rep. Carver; Roberts Sen. Gardner; Fields	Bill Status:	House Judiciary
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Bill Topic: ENFORCEMENT OF SEXUAL EXPLOITATION OF A CHILD

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill makes sexual exploitation of a child an extraordinary risk crime, creates a new surcharge on offenders, creates a grant program, and updates related statutory definitions. It will increase state and local revenue and expenditures on an ongoing basis beginning in FY 2020-21.

Appropriation Summary: For FY 2020-21, the bill requires an appropriation of \$68,052 to the Department of Public Safety and the Judicial Department. In addition, the Department of Corrections requires a total five-year appropriation of \$1.2 million for prison operating and parole costs. Capital construction funding of \$3.7 million may also be appropriated to the Department of Corrections; see State Appropriations section. Finally, the bill creates a continuously appropriated cash fund which will not require an appropriation.

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

**Table 1
State Fiscal Impacts Under HB 20-1120**

		FY 2020-21	FY 2021-22
Revenue	General Fund	\$636	\$1,468
	Cash Funds	\$12,088	\$27,895
	Total	\$12,724	\$29,363
Expenditures	General Fund	\$68,052	\$104,606
	Cash Funds	\$12,088	\$27,895
	Centrally Appropriated	\$21,320	\$25,009
	Total	\$101,460	\$157,510
Total FTE		0.8 FTE	1.0 FTE
Transfers		-	-
TABOR Refund	General Fund	\$12,724	\$29,363

Summary of Legislation

This bill makes sexual exploitation of a child an extraordinary risk crime, creates a new surcharge on offenders, creates a grant program, and updates related statutory definitions, as detailed below.

Sexual exploitation of a child as an extraordinary risk crime. This bill makes sexual exploitation of a child an extraordinary risk crime—which increases the minimum and maximum sentence in the presumptive sentencing range depending on the felony level—if the sexually exploitative material depicts a child who is: under 12 years of age; subjected to the actual application of physical force or violence; or subject to sexual intercourse, sexual intrusion, or sadomasochism.

Sexual Exploitation of Children Surcharge and Cash Fund. The bill creates the Sexual Exploitation of Children Surcharge (surcharge) and Cash Fund (fund). Beginning January 1, 2021, all adults person convicted of or receiving a deferred sentence related to sexual exploitation of a child is required to pay a sex offender surcharge as follows:

- \$2,000 for a class 3 felony;
- \$1,000 for a class 4 felony;
- \$500 for a class 5 felony; and
- \$250 for a class 6 felony.

The surcharge is allocated as follows:

- 5 percent for court's administrative costs collecting the surcharge; and
- 95 percent to the fund.

The fund is continuously appropriated to the Division of Criminal Justice (division) in the Department of Public Safety (DPS).

Enhance the Effective Investigation and Prosecution of Computer-facilitated Sexual Exploitation of Children Grant Program. The bill creates the Enhance the Effective Investigation and Prosecution of Computer-facilitated Sexual Exploitation of Children Grant Program (grant program). The division must award grants to law enforcement agencies to assist with acquiring and developing necessary technological or expert resources to investigate and prosecute computer-facilitated crimes of sexual exploitation of a child. In addition to surcharge revenue and any General Fund appropriations, the division may seek gifts, grants, and donations to fund the administration and issuance of grants.

Modernizing sexual exploitation definitions. Finally, this bill defines possession and sexual intrusion in the statutes addressing sexual exploitation of a child and updates certain actions described as sexual exploitation of a child to reflect current technology.

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 makes sexual exploitation of a child an extraordinary risk crime. From 2017 to 2019, there have been 611 individuals convicted and sentenced for this offense. Of the persons convicted, 596 were male, 14 were female, and 1 did not have a gender identified. Demographically, 540 were White, 28 were Black/African American, 34 were Hispanic, 1 was Asian, 3 were American Indian, and 5 were classified as "Other."

Assumptions. This analysis uses data from the Department of Corrections (DOC) and average length of stay and parole projections from the division to inform the assumptions about the number of offenses that will be classified as an extraordinary risk crime and the additional time future offenders will serve. Over the past three years, convictions under the sexual exploitation of a child offense resulting in incarceration in the DOC averaged per year:

- 29 class 3 felonies;
- 26 class 4 felonies;
- 7 class 5 felonies; and
- 5 class 6 felonies.

Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Revenue

The bill is expected to increase state revenue to the General Fund and newly created Sexual Exploitation of a Child Cash Fund by \$12,724 in FY 2020-21 and \$29,363 in FY 2021-22, as shown in Table 2 and discussed further below.

Assumptions. The state revenue assumptions assume that approximately 230 cases per year will be subject to the new surcharge. Case estimates use a two-year average of actual convictions under existing offenses. First-year cases are prorated for the effective date. Case numbers have been adjusted to represent a 25 percent indigence factor, a 13 percent first-year collection factor, and a 4 percent outyear collection factor.

**Table 2
Revenue Under HB 20-1120**

Fiscal Year	Offense Classification	Surcharge Under Bill	Estimated Cases*	Estimated Assessment	Estimated Collections**
FY 2020-21	F3	\$2,000	24.5	\$49,000	\$6,370
	F4	\$1,000	39	\$39,000	\$5,070
	F5	\$500	17.5	\$8,750	\$1,138
	F6	\$250	4.5	\$1,125	\$146
Total Collections					\$12,724
<i>General Fund (5%)</i>					\$636
<i>Sexual Exploitation of Children Cash Fund (95%)</i>					\$12,088
FY 2021-22	F3	\$2,000	49	\$98,000	\$12,740
	F4	\$1,000	78	\$78,000	\$10,140
	F5	\$500	35	\$17,500	\$2,275
	F6	\$250	9	\$2,250	\$293
FY 2021-22 Collections Total					\$25,448
Additional FY 2020-21 Collections Total***					\$3,915
Total Collections					\$29,363
<i>General Fund (5%)</i>					\$1,468
<i>Sexual Exploitation of Children Cash Fund (95%)</i>					\$27,895

* Case estimates use a two-year average of actual convictions under existing offenses. First-year cases are prorated for January 1, 2021, surcharge effective date. Case numbers have also been adjusted to represent a 25 percent indigence factor.

** Estimated collections assume 13 percent of surcharges will be paid by June 30 of the fiscal year.

*** Year 1 collections in FY 2021-22 assume 4 percent return on FY 2020-21 assessments.

State Expenditures

The bill increases state expenditures by \$101,460 and 0.8 FTE in FY 2020-21 and \$157,510 and 1.0 FTE in FY 2021-22. In addition, the bill increases costs in the DOC over the next five years by \$1.2 million. The bill may also potentially increase future capital construction costs in the DOC. These impacts are shown in Table 3 and Table 4 and described below.

Department of Public Safety. The division requires 1.0 FTE grants program specialist to manage the new grant program under the bill. These costs are based on the Law Enforcement Assistance Grant Program as a proxy. Staff will develop program requirements; draft request for proposals; create a review process; award, monitor grant activities and report; and provide training and ongoing technical assistance to grantees. Standard operating and capital outlay expenses are included. First-year costs reflect an August start date and the General Fund payday shift.

**Table 3
Expenditures Under HB 20-1120**

	FY 2020-21	FY 2021-22
Department of Public Safety		
Personal Services	\$53,962	\$64,755
Operating Expenses	\$1,350	\$1,350
Capital Outlay Costs	\$6,200	-
Travel	\$5,904	\$5,904
Grant Funding from New Surcharge (see Table 2)*	\$12,088	\$27,895
Centrally Appropriated Costs**	\$21,320	\$25,009
FTE - Personal Services	0.8 FTE	1.0 FTE
DPS (Subtotal)	\$100,824	\$124,913
Department of Corrections		
Operating and Parole Costs (see Table 4)	-	\$31,129
DOC (Subtotal)	\$0	31,129
Judicial Department		
Surcharge Administration	\$636	\$1,468
Judicial (Subtotal)	\$636	\$1,468
TOTAL	\$101,460	\$157,510
TOTAL FTE	0.8 FTE	1.0 FTE
<i>General Fund</i>	\$68,052	\$104,606
<i>Sexual Exploitation of Children Cash Fund</i>	\$12,088	\$27,895
<i>Centrally Appropriated</i>	\$21,320	\$25,009

* The Sexual Exploitation of Children Cash Fund is expected to grow over time and may be able to cover some amount of grant program costs in future fiscal years.

** Centrally appropriated costs are not included in the bill's appropriation.

Department of Corrections operating and parole costs (five-year fiscal impact). Based on the assumptions provided in the Comparable Crime Analysis section and shown in Table 4 below, this bill increases prison operating costs for the DOC by a total of \$1,213,996 over the five-year period beginning in FY 2020-21. The fiscal note assumes no additional prison or parole operating impacts will occur in the first year due to the amount of time required for criminal filing, trial, disposition, and sentencing of each case. Bed operating costs assume the state daily rate of \$116.89 and parole costs assume the daily rate of \$16.06.

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

Fiscal Year	ADP Impact	Parole Impact	Operating Cost
FY 2020-21	-	-	-
FY 2021-22	0.85	-0.85	\$31,129
FY 2022-23	-1.56	2.51	(\$51,727)
FY 2023-24	12.87	-11.92	\$479,339
FY 2024-25	20.67	-21.62	\$755,255
Total Cost			\$1,213,996

Department of Corrections capital construction costs. In addition to the five-year operating and parole impacts discussed above, Section 2-2-703, C.R.S. requires that the General Assembly consider increased capital construction costs for the DOC to house additional inmates. Based on the average per bed construction costs of previous prison facilities of \$178,471 per bed, capital construction costs of \$3.7 million for the estimated 21 additional beds created under the bill by FY 2024-25 may be required. If the General Assembly determines that additional prison bed space is needed, this bill should include a transfer of General Fund to the Capital Construction Fund and a reappropriation of this funding to the Corrections Expansion Reserve Fund. Money in the Corrections Expansion Reserve Fund is available for future DOC construction projects, which would be identified and funded through the annual budget process based on the state's overall prison needs.

Judicial Department. Expenditures in the Judicial Department to administer the new surcharge will increase by the 5 percent amount of the new surcharge credited to the department, as estimated in Table 2. The department will also have to perform computer programming related to the surcharge, which can be accomplished within existing appropriations. Trial courts of the Judicial Department are not anticipated to see an increase in workload under the bill as these cases are already charged and heard in the trial courts under current law.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$21,320 in FY 2020-21 and \$25,009 in FY 2021-22.

TABOR refunds. The bill is expected to increase state General Fund obligations for TABOR refunds by \$12,724 in FY 2020-21 and \$29,363 in FY 2021-22. Under current law and the December 2019 Legislative Council Staff forecast, the bill will correspondingly increase the amount refunded to taxpayers via sales tax refunds made available on income tax returns for tax years 2021 and 2022, respectively. A forecast of state revenue subject to TABOR is not available beyond FY 2021-22.

Effective Date

The bill takes effect August 5, 2020, if the General Assembly adjourns on May 6, 2020, as scheduled, and no referendum petition is filed. Section 1 of the bill applies to offenses committed on or after the effective date. The surcharge applies to offenses committed on or after January 1, 2021.

State Appropriations

In FY 2020-21, this bill requires the following appropriations:

- \$67,416 and 0.8 FTE from the General Fund to the Department of Public Safety; and
- \$636 from the General Fund to the Judicial Department.

The bill also requires a five-year appropriation of \$1,213,996 from the General Fund to the Department of Corrections. As discussed in the DOC capital construction costs section above, the General Assembly may appropriate \$3.7 million for prison bed construction, if necessary.

No appropriation is required from the Sexual Exploitation of Children Cash Fund, which is continuously appropriated to the DPS.

State and Local Government Contacts

Alternate Defense Counsel
Child Welfare
Counties
Human Services
Judicial
Office of Public Guardianship
Office of the Child's Representative
Public Safety

Child Protection Ombudsman
Corrections
District Attorneys
Information Technology
Law
Office of Respondent Parents' Counsel
Public Defender