



**Colorado
Legislative
Council
Staff**

HB17-1064

FISCAL NOTE

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

Drafting Number: LLS 17-0542

Date: January 19, 2017

Prime Sponsor(s): Rep. Willett

Bill Status: House Judiciary

Sen. Fields

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

BILL TOPIC: MISUSE OF ELECTRONIC IMAGES BY A JUVENILE

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue		
Cash Funds	Potential decrease. See State Revenue section.	
State Expenditures		
General Fund	Potential increase and decrease. See State Expenditures section.	
TABOR Impact	Potential decrease. See TABOR Impact section.	
Appropriation Required: None.		
Future Year Impacts: Ongoing potential revenue decrease and expenditure increase and decrease.		

Summary of Legislation

This bill creates a crime of misuse of electronic images by a juvenile. A juvenile commits this crime if:

- he or she distributes, displays, or publishes a nude or partially nude digital photo of himself or herself or another youth who is within four years of age; or
- knowingly possesses a nude or partially nude digital photo of another youth who is within four years of age of the charged juvenile.

It is an affirmative defense to this crime if it occurred as a result of coercion, intimidation, or harassment; or if the recipient of the image did not solicit or request the image, did not participate in or encourage the making of it, did not transmit or distribute it, and took reasonable steps to either destroy, delete, or report the image to authorities within 72 hours.

This crime is a class 2 misdemeanor unless the following conditions are met, in which case it is a class 1 petty offense:

- the juvenile sent the image to a person 14 years of age or older and who is within four years of age of that juvenile;
- the juvenile sent the image only once;

- the image depicts only the sender and no other person;
- the juvenile reasonably believed that the recipient had solicited or otherwise requested the image; and
- the juvenile expressed to the recipient that the image may not be shared with anyone else.

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 convictions 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 convictions 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 decrease state cash fund revenue by a minimal amount.

Criminal fines. This bill may decrease state revenue by a minimal amount, credited to the Fines Collection Cash Fund in the Judicial Department. The fiscal note assumes that the majority of cases involving the conduct contemplated by this bill are being charged under current law. 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 reduction is likely to be minimal.

Court and administrative fees. This bill may also decrease state fee revenue by a minimal amount. Typically district court fees for felony offenses are higher than county court fees for misdemeanor offenses. 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, fee revenue may decrease. If more offenders are sentenced to probation under the bill, fee revenue may increase. The fee for probation is currently \$50 per month. Some fee revenue is shared with local governments; please refer to the Local Government Impact section for additional information.

TABOR Impact

This bill may decrease state cash fund revenue from fines and fees, which will decrease 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.

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.

Judicial Department. To the extent that this bill causes cases that are currently charged as felonies to be charged as misdemeanors or petty offenses, costs and workload for trial courts and representation by either the Office of the State Public Defender (OSPD) or Alternate Defense Counsel (ADC) will decrease. Costs in probation services may increase. To the extent that this bill allows for new case filings, workload and costs for trial courts, probation, OSPD, and ADC may increase. If new guardians ad litem are appointed to represent juveniles, costs may also increase in the Office of the Child's Representative. Any such 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 cases that are currently charged as felonies are instead charged as misdemeanors or petty offenses, sentences to the Division of Youth Corrections (DYC) may decrease, reducing costs. If the bill results in new filings against juveniles and new sentences to DYC, costs may increase. Given the small number of cases filed over the last three years, the fiscal note assumes that any increase 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 addressed through the annual budget process.

Local Government Impact

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

Criminal fine revenue. This bill may increase revenue by a minimal amount for the City and County of Denver for any new cases or cases that would have previously been charged as a felony. The fine penalty for a class 2 misdemeanor is \$250 to \$1,000 and for a class 1 petty offense, not more than \$500.

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 may decrease.

Denver County expenditures. The bill may result in an increase in workload for the Denver County Court, managed and funded by the City and County of Denver. 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 Courts may also experience a minimal increase in workload to supervise persons convicted under the bill.

Effective Date

The bill takes effect July 1, 2017, and applies to offenses committed on or after this date.

State and Local Government Contacts

Counties	Corrections	District Attorneys
Human Services	Information Technology	Judicial
Sheriffs		