



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

HB 20-1120

**REVISED
FISCAL NOTE**

(replaces fiscal note dated February 11, 2020)

Drafting Number: LLS 20-0243
Prime Sponsors: Rep. Carver; Roberts
Sen. Gardner; Fields

Date: March 9, 2020
Bill Status: Senate Judiciary
Fiscal Analyst: Erin Reynolds | 303-866-4146
Erin.Reynolds@state.co.us

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, 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 and includes an appropriation of \$636 to the Judicial Department. In addition, the bill requires and includes a total five-year appropriation of \$80,571 to the Department of Corrections for prison operating and parole costs. Capital construction funding of up to \$178,471 may also be appropriated to the Department of Corrections. The remainder of the bill's expenditures are paid from a continuously appropriated cash fund.

Fiscal Note Status: The revised fiscal note reflects the reengrossed 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 | \$636 | \$7,694 |
| | Cash Funds | \$12,088 | \$27,895 |
| | Total | \$12,724 | \$35,589 |
| 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, 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 persons convicted of or receiving a deferred sentence related to sexual exploitation of a child are required to pay a sex offender surcharge, based on the most serious crime in the conviction of the case, 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 Colorado Bureau of Investigation (CBI) in the Department of Public Safety (DPS). The CBI must use the fund to develop or acquire necessary technological or expert resources to investigate and prosecute computer-facilitated sexual exploitation of children. The fund may also accept General Fund money and gifts, grants, or donations.

Modernizing sexual exploitation definitions. Finally, this bill 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. While the Judicial Department data show an average of 204 offenders per year convicted under the sexual exploitation of a child offense, the majority of these offenders are sentenced to probation. Using data from the Department of Corrections (DOC), the most recent three-year average was 67 offenders sentenced to DOC under the sexual exploitation of a child offense, including 29 class 3 felonies; 26 class 4 felonies; 7 class 5 felonies; and 5 class 6 felonies. Of these, the majority of offenders pled down from a higher classification of offense. The fiscal note assumes approximately one quarter (or 16) of these offenders were sentenced under the actual offense of sexual exploitation of a child, and further reduces that population by another one quarter due to the limiting criteria under the bill (victim under 12 years of age; subjected to the actual application of physical force or violence; or subject to sexual intercourse, sexual intrusion, or sadomasochism). Therefore, it is assumed that 4 offenders, one in each felony class, will be sentenced as an extraordinary risk crime under the bill.

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. This revenue is subject to TABOR. The bill may also increase state revenue from gifts, grants, and donations, which have not been identified as of writing, and are not subject to TABOR.

Assumptions. The state revenue assumptions assume that approximately 200 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 | | | | |
| <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 | | | | |
| 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 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 a total of \$12,724 in FY 2020-21 and \$29,363 in FY 2021-22, as shown in Table 3. The bill also creates a five-year appropriation to the DOC of \$80,571 and may increase future capital construction costs, as shown in Tables 3 and 4. These impact are discussed further below.

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

| | FY 2020-21 | FY 2021-22 |
|--|-------------------|-------------------|
| Department of Corrections | | |
| Operating and Parole Costs (see Table 4) | - | \$6,226 |
| Department of Public Safety | | |
| Surcharge | \$12,088 | \$27,895 |
| Judicial Department | | |
| Surcharge Administration (see Table 2) | \$636 | \$1,468 |
| TOTAL | \$12,724 | \$35,589 |
| <i>General Fund</i> | \$636 | \$7,694 |
| <i>Sexual Exploitation of Children Cash Fund</i> | \$12,088 | \$27,895 |

Department of Public Safety. Expenditures in the DPS will increase up to \$12,088 in FY 2020-21 and up to \$27,895 in FY 2021-22 from the Sexual Exploitation of Children Cash Fund, which is continuously appropriated to the department for the purposes of developing or acquiring necessary technological or expert resources to investigate and prosecute computer-facilitated sexual exploitation of children.

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 \$80,571 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 | 0.17 | -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 |
| | | Total Cost | \$80,571 |

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 up to \$178,471 for the estimated one additional bed 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.

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 and includes the following appropriations:

- \$636 from the General Fund to the Judicial Department; and
- a five-year appropriation of \$80,571 from the General Fund to the Department of Corrections.

As discussed in the DOC capital construction costs section above, the General Assembly may appropriate up to \$178,471 for prison bed construction. 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