



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number:	LLS 21-0257	Date:	August 31, 2021
Prime Sponsors:	Sen. Hisey; Zenzinger Rep. Larson; Bradfield	Bill Status:	Signed into Law
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Bill Topic: **SEXUAL CONTACT BY AN EDUCATOR**

Summary of Fiscal Impact:

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

This bill adds new requirements for charter schools and school districts related to allegations of a sexual act involving an employee and a student who is 18 years or older, and creates a class 1 misdemeanor offense for the abuse of public trust by an educator. Starting in FY 2021-22, the bill minimally increases state and local government revenue and expenditures on an ongoing basis.

Appropriation Summary: No appropriation is required.

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

Summary of Legislation

This bill adds new requirements for charter schools, school districts, and the State Board of Education related to allegations of a sexual act involving an employee and a student enrolled at the same school who is 18 years or older, regardless of consent. This bill also creates a class 1 misdemeanor offense and extraordinary risk crime for the abuse of public trust by an educator for engaging in sexual contact with a student over the age of 18, if certain conditions are met. The offense may be punished with up to 30 months imprisonment. Consent by the student is not a defense to the crime.

Abuse of public trust by an educator. Abuse of public trust is committed by any educator, including a teacher, administrator, counselor, or coach who:

- subjects a student 18 years or older to sexual contact;
- is employed at the same preschool through 12th grade school that the student attends at the time of the sexual contact;
- is more than 4 years older than the student; and
- is not the student's spouse.

Background checks on prospective employees. When conducting background checks on applicants, the bill adds an additional requirement that charter schools and school districts determine whether an applicant has been previously dismissed by or resigned from a school district or charter school as a result of an allegation of sexual acts involving a student 18 years of age or older at that school.

Notifications. The bill requires that the governing board of a charter school or school district notify and share information with the Department of Education when one of their employees resigns or is dismissed as a result of an allegation of sexual acts involving a student 18 years of age or older at that school. The employee must be notified that this information is being sent to the department.

Settlements. The charter school or school district may not enter into any settlement agreement that would restrict the school from sharing relevant information regarding an allegation with the department, another school district, or another charter school.

State Board of Education. The bill requires that the State Board of Education promulgate rules defining the standards of unethical behavior and professional incompetency in order to determine when to deny, annul, suspend, or revoke any license, certificate, endorsement, or authorization. The definition of unethical behavior must include the misconduct described above.

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. This section outlines data on crimes comparable to the offense in this bill and discusses assumptions on future rates of criminal conviction for those offense.

Prior conviction data and assumptions. This bill creates the offense of abuse of public trust by an educator, a class 1 misdemeanor. To form an estimate on the prevalence of this new crime, the fiscal note analyzed the existing offense of sexual assault on a person ages 15 to 18 by someone in a position of trust as a comparable crime. From 2018 to 2020, 330 persons have been convicted and sentenced for this existing offense. Of the persons convicted, 320 were male, 9 were female, and 1 did not have a gender identified. Demographically, 259 were White, 24 were African American, 39 were Hispanic, 3 were Asian, 1 was American Indian, and 4 were classified as "Other."

Assumptions. While this bill creates a new misdemeanor offense, it is assumed the number of cases that will result from the bill will be minimal due to the narrow definitions of victim and offender.

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

State Revenue and Expenditures

Based on the assumptions above, this bill is expected to have a minimal impact on state revenue and expenditures. Under the bill, criminal fines and court fees, which are subject to TABOR, may increase by a minimal amount. Similarly, any increase in workload and costs for the Judicial Department, including the trial courts, Division of Probation, and agencies that provide representation to indigent persons are assumed to be minimal and no change in appropriations is required.

In addition, for FY 2021-22 this bill will minimally increase workload in the Department of Education to promulgate rules and define standards of unethical behavior and professional incompetency. This workload is expected to be absorbable and no change in appropriation is required.

TABOR refunds. The bill is expected to minimally increase the amount of state revenue required to be refunded to taxpayers by the amounts discussed in the State Revenue section above. TABOR refunds are paid from the General Fund. This estimate is based on the June 2021 LCS revenue forecast, which incorporates the revenue impacts of bills passed during the 2021 session. A forecast of state revenue subject to TABOR is not available beyond FY 2022-23.

Federal ARPA funds. This bill increases state revenue, which may impact the state's flexibility in spending federal American Rescue Plan Act (ARPA) funds. For more information, see the LCS memo, titled "Legislative Changes and Flexibility in Use of American Rescue Plan Funds," available online at: <https://leg.colorado.gov/node/2211881>.

Local Government and School Districts

Similar to state, this bill is expected to have a minimal impact on local government agencies. Potential local government impacts are explained in more detail below.

District attorneys. It is expected that any workload or cost increase for district attorneys to prosecute the new class 1 misdemeanor under the bill will be minimal. District Attorney Offices are funded by counties, with each county in a judicial district contributing based on its population.

County jails. Based on the assumptions listed in the Comparable Crime Analysis section, the bill may increase county jail costs. However, because the courts have the discretion of incarceration or imposing a fine, the precise county impact cannot be determined. Under current law, the state reimburses county jails for housing state inmates. For the current fiscal year, the state reimburses county jails at a daily rate of \$57.97.

Denver County Court. The bill increases revenue, costs and workload for the Denver County Court, which is managed and funded by the City and County of Denver, to try misdemeanor cases under the bill. Probation services in the Denver County Courts may also experience an increase in revenue, costs, and workload revenue to supervise persons convicted under the bill within Denver County.

School Districts. Beginning in FY 2021-22 this bill may minimally increase workload for local school districts to investigate allegations of unethical behavior and report to the Department of Education.

Effective Date

This bill was signed into law by the Governor on July 2, 2021, and takes effect on September 7, 2021, assuming no referendum petition is filed.

State and Local Government Contacts

Education

Judicial

School Districts