



**Colorado
Legislative
Council
Staff**

SB16-146

**REVISED
FISCAL NOTE**

(replaces fiscal note dated March 14, 2016)

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

Drafting Number: LLS 16-0214
Prime Sponsor(s): Sen. Steadman
Rep. Esgar

Date: May 3, 2016
Bill Status: House Judiciary
Fiscal Analyst: Kerry White (303-866-3469)

BILL TOPIC: MODERNIZE STATUTES SEXUALLY TRANSMITTED INFECTIONS

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue	<\$5,000	<\$5,000
Cash Funds	<5,000	<5,000
State Expenditures	Workload increase.	
TABOR Impact		<\$5,000
Appropriation Required: None.		
Future Year Impacts: Ongoing state revenue and workload increases.		

Summary of Legislation

This *reengrossed* bill updates state law concerning sexually transmitted infections (STIs) and allows for all STIs to be treated uniformly. It removes language specifically criminalizing HIV infection.

STI reporting. It directs the State Board of Health (board), within the Colorado Department of Public Health and Environment (CDPHE), to adopt rules to implement the bill, including rules addressing the control and treatment of STIs. These rules must specify the information that must be reported to the board, CDPHE or a local public health agency, and the performance and standards for anonymous and confidential HIV counseling and testing. Mandatory reporters of STIs include every health care provider in the state; persons who test, diagnose, or treat STIs in a hospital, clinic, correctional institution, or other institution; and a laboratory or person performing a test for a case of an STI. A person who, in good faith, complies with the reporting and treatment requirements is immune from civil and criminal liability for such actions. The bill clarifies the confidentiality of reports and provides procedures, under limited circumstances, for releasing information.

Infection control. The bill clarifies that it is the duty of CDPHE staff and local public health officials to investigate STIs and to use appropriate means to prevent their spread. When a public safety, emergency or health care provider, first responder, crime victim, or staff member of a correctional facility, CDPHE or a local public health agency has been exposed to blood or other bodily fluids for which there is an evidence-based reason to suspect may lead to exposure to a STI, the CDPHE or local public health agency is to assist in the evaluation and treatment of those

persons, including counseling. Except for preventative services, a minor may seek an examination or treatment for a STI without parental consent. Services provided to minors are confidential, although if the minor is 13 or younger, the health care provider is required to involve the minor's parent or legal guardian. Except as specified, no specimen of a patient may be tested for a STI without his or her knowledge and consent. Persons who test positive for STIs are to be informed of their results and be provided counseling on measures for preventing transmission to others.

Public health orders. The bill directs that cease and desist orders and other restrictive measures directed towards a person with a STI be issued as a last resort and provided certain conditions have been met. Under the bill, if a person who is the subject of a cease and desist order refuses to comply with the order and public health officials, the public health officials, through the county attorney or Attorney General, may petition the district court for an order of compliance. If the public health official does not petition the district court within 30 days after the person who is the subject of the order refuses to comply, that person can petition the district court for dismissal and expungement of the order. The bill prohibits a public health officer or employee from being examined by any judicial, legislative, executive, or other proceeding as to the existence or content of any individual's report.

Public health injunctions. If a public health official believes that a person with a STI presents an imminent risk to the public health, they may bring an action in district court to enjoin the person from engaging in certain conduct. In these instances, the district attorney or the Attorney General, if the district attorney does not act, may file the case.

New criminal penalties. Failure to file a mandatory public health report is a class 2 petty offense, punishable by a fine of not more than \$300. A breach of confidential health care information is an unclassified misdemeanor, punishable by a fine of between \$500 and \$5,000, a term in county jail of 6 to 24 months, or both.

Repealed crimes and sentencing. The bill repeals the crimes of engaging in prostitution with knowledge of being infected with AIDS (class 5 felony) and patronizing a prostitute with knowledge of being affected with AIDS (class 6 felony). Under current law, an individual committing a sex offense with the knowledge of having HIV is sentenced to an indeterminate sentence of at least three times the upper limit of the presumptive range for the level of offense committed, up to natural life. This bill clarifies that the term is the upper limit of the presumptive range for the level of offense committed, up to natural life.

Crime victims. Under the bill, victims of crimes have the right to made aware of the results of any court ordered STI test, not just HIV status, upon their request.

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., 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. In the past three years, there have been six cases filed with at least one charge of prostitution with knowledge of being infected with AIDS and zero convictions. There have been zero charges and convictions of patronizing a prostitute with knowledge of being infected with AIDS. The bill also establishes two new crimes related to failure to file a mandatory public health report and breaching confidential health care information. As of this writing, the potential increase in criminal penalties has not been estimated, but is assumed to be minimal.

State Revenue

Beginning in FY 2016-17, this bill is anticipated to increase state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. Failure to file a mandatory public health report is a class 2 petty offense, punishable by a fine of not more than \$300. Releasing confidential health care information is an unclassified misdemeanor, punishable by a fine of between \$500 and \$5,000, a term in county jail of 6 to 24 months, or both. If a person is sentenced to probation, an additional fee of \$50 per month is collected. Based on the low number of fines imposed in 2015, the fiscal note assumes that any revenue generated is likely to be less than \$5,000. It should be noted that while the bill repeals two crimes, there have been zero convictions of either crime in the last three years, so there is no offsetting reduction in revenue.

TABOR Impact

This bill increases state revenue from fines, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund. No impact is expected in FY 2016-17.

State Expenditures

Beginning in FY 2016-17, this bill is anticipated to increase workload in several state agencies and may reduce future costs in the Department of Corrections by an indeterminate amount.

Judicial Department. Overall, this bill may increase workload and costs for the trial courts and agencies that provide representation to indigent defendants (Office of the State Public Defender and Office of the Alternate Defense Counsel). The bill eliminates two felony level offenses, for which there have been, on average, two trials per year in district courts. However, it creates two new offenses (a class 2 petty offense and unclassified misdemeanor), which will be heard in county courts. For the unclassified misdemeanor, workload may increase in the Probation Services Division if a person is sentenced to probation. In addition, the bill creates a process for district court review of certain public health orders and injunctions, for which there is assumed to be about one case every three to four years. These increases are not expected to require an increase in appropriations for any agency in the Judicial Department.

Colorado Department of Public Health and Environment. For the most part, this bill codifies current practice for the State Board of Health and CDPHE. A minimal amount of workload may be experienced in cases where a STI-infected person refuses to comply with orders and judicial relief must be sought. This workload can be accomplished within existing appropriations.

Department of Law. If requested by the CDPHE or a local public health official, the Attorney General's Office may be required to seek judicial relief in matters related to an STI-infected person. Based on current practice, this analysis assumes there may be one case every three to four years. The fiscal note assumes this workload can be accomplished within existing appropriations.

Department of Corrections. This bill lowers the minimum term for indeterminate sentencing for sex offenses when the defendant was knowingly infected with HIV. As of this writing, it is not known how many offenders this provision may apply to, or which offenses these offenders were sentenced for. The fiscal note assumes that the bill will reduce costs for the

Department of Corrections in the future, outside of the current five-year appropriations period, and that any reductions will be addressed through the annual budget process. For informational purposes, offenders placed in a private contract prison currently cost the state about \$59.90 per offender per day, including the current daily rate of \$56.02 and an estimated \$3.88 per offender per day for medical care provided by the DOC.

Local Government Impact

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

Misdemeanor offenses in county courts. First, the bill may increase workload for district attorneys to prosecute any new criminal offenses under the bill. Workload will also decrease from repealing certain crimes. Second, to the extent that this bill increases unclassified misdemeanor convictions related to the release of confidential health information and offenders are sentenced to jail, costs will increase. Under the bill, a court may sentence an offender to jail for an unclassified misdemeanor for a period of between 6 and 24 months. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. The cost to house an offender in county jails varies from about \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$52.74 to house state inmates. It is assumed that the impact of this bill will be minimal.

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

Public health orders and injunctions. Under the bill, a county attorney or district attorney may work with a public health official, including a local public health official, to seek judicial relief when a STI-infected person is noncompliant. Workload and costs may increase to file petitions in district court. These costs have not been estimated, but the fiscal note assumes there will be one case every three or four years.

Effective Date

The bill takes effect July 1, 2016.

State and Local Government Contacts

Corrections
District Attorneys
Health Care Policy and Financing
Human Services
Judicial
Municipalities
Regulatory Agencies

Counties
Education
Higher Education
Information Technology
Law
Public Health and Environment
Sheriffs