



**Colorado
Legislative
Council
Staff**

HB17-1302

FISCAL NOTE

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

Drafting Number: LLS 17-0184
Prime Sponsor(s): Rep. Lee

Date: March 31, 2017
Bill Status: House Judiciary
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BILL TOPIC: JUVENILE SEXTING CRIME

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue Cash Funds	Potential decrease. See State Revenue section.	
State Expenditures General Fund	Potential 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 decrease.		

Summary of Legislation

The bill creates the crime of posting or possessing private images by a juvenile. It amends the crime of sexual exploitation of a child, a class 3, 4, or 5 felony, by specifying that it is not a violation of certain types of offenses if a person under 18 is coerced, intimidated, or harassed into disclosing publicly any sexually exploitative material that depicts a child. It is also not a violation if the actor is under 18 years old and the child is at least 14 years old and less than four years younger than the actor, unless:

- the actor knowingly discloses publicly any sexually exploitative material that depicts the child; or
- knowingly distributes, displays, or publishes sexually exploitative material that depicts the child with the intent to make money.

The bill states that a juvenile charged with posting or possessing private images cannot also be charged with sexual exploitation of a child for the same images.

Posting a private image. A person under 18 commits this offense by knowingly distributing, displaying, or publishing a sexually explicit image of another juvenile without the depicted juvenile's consent, when the recipient did not solicit or request the image and suffered emotional distress, or when the person knew or should have known that the depicted juvenile had

a reasonable expectation that the image would remain private. It is also an offense if a juvenile knowingly distributes, displays, or publishes to the view of more than one person at a time a sexually explicit image of him- or herself. This crime is a class 2 misdemeanor, unless one of the following conditions are met, in which case it is a class 1 misdemeanor:

- the juvenile committed the offense with the intent to coerce, intimidate, threaten, harass, or otherwise cause emotional distress to the depicted juvenile;
- the juvenile had previously posted a private image and completed a diversion program for the act or had prior adjudication for posting a private image; or
- the juvenile distributed, displayed, or published three or more images that depicted separate juveniles.

Possessing a private image. A juvenile commits this offense if he or she knowingly possesses a sexually explicit digital image of another juvenile without the juvenile's consent, unless the person took reasonable steps to either destroy, delete, or report the image to law enforcement or a school official within 72 hours of receiving it. It is also an offense to knowingly possess a sexually explicit image of another juvenile if the depicted juvenile rescinded his or her consent for the person to have the image by requesting that it be deleted or destroyed and the person failed to delete or destroy it within 72 hours. This crime is a class 2 misdemeanor if the unsolicited possessor of the image knowingly kept or saved three or more images that depicted separate juveniles. In all other cases, it is a petty offense.

Sentencing options. The court may order an offender be assessed for participation in restorative justice practices after the victim has been consulted, advised, and invited to participate. District attorneys are encouraged to develop diversion programs for juveniles and offer the programs to first time offenders.

School Safety Resource Center. The bill directs the School Safety Resource Center (SSRC) within the Department of Public Safety to develop a curriculum by June 1, 2018, regarding the dangers and consequences of sending sexually explicit digital images. The curriculum must inform students that they can avoid criminal responsibility for possessing a sexually explicit digital image if they take steps to either destroy, delete, or report it within 72 hours.

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 adjudicated guilty 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 adjudications 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 is expected to 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 will decrease. If more offenders are sentenced to probation under the bill, fee revenue may increase. The fee for probation is currently \$50 per offender 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 is expected to 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 decreases 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 increase 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. It increases workload by a minimal amount in the Department of Public Safety.

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 either the Office of the State Public Defender (OSPD) or Office of the Alternate Defense Counsel (OADC) 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 OADC 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 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. Should cases that are currently charged as felonies be adjudicated 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 change 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 requested through the annual budget process.

Department of Public Safety (DPS). The bill increases workload for the SSRC in DPS by a minimal amount. The SSRC is required to develop a curriculum by June 1, 2018, regarding the dangers and consequences of sending sexually explicit digital images. This increase in workload can be accomplished with existing appropriations.

Local Government Impact

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

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 will decrease.

Denver County revenue and expenditures. This bill may increase revenue by a minimal amount for the Denver County Court, managed and funded by the City and County of Denver, for any new misdemeanor or petty offense 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. The bill may also result in an increase in workload for the Denver County Court. 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 Court 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

Corrections
Information Technology
Sheriffs

Counties
Judicial

Human Services
Public Safety