



Legislative  
Council Staff

*Nonpartisan Services for Colorado's Legislature*

**FISCAL NOTE**

<b>Drafting Number:</b>	LLS 18-0388	<b>Date:</b>	March 16, 2018
<b>Prime Sponsors:</b>	Rep. Jackson; Carver Sen. Cooke; Fields	<b>Bill Status:</b>	House Judiciary
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**Bill Topic:** CHANGES TO REVENGE PORN CRIMES

<b>Summary of Fiscal Impact:</b>	<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure ( <i>minimal</i> )	<input checked="" type="checkbox"/> Local Government
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill modifies the means for committing the existing crimes of posting a private image for harassment and posting a private image for pecuniary gain. It increases state and local revenue, expenditures, and workload on an ongoing basis.

**Appropriation Summary:** No appropriation is required.

**Fiscal Note Status:** The fiscal note reflects the introduced bill.

**Table 1**  
**State Fiscal Impacts Under HB 18-1264**

		FY 2018-19	FY 2019-20
<b>Revenue</b>	General Fund and Cash Funds	at least \$10,000	at least \$10,000
<b>Expenditures</b>		-	-
<b>Transfers</b>		-	-

## Summary of Legislation

This bill modifies elements of existing crimes concerning the posting nude images of another person for purposes of harassment or for monetary gain. This bill:

- adds images of sex acts that may not include nude images;
- removes the requirement that the defendant intend to inflict serious emotional distress;
- removes as an exception to the crimes that the image relates to a newsworthy event; and
- clarifies that the images subject to the crimes may be disclosed by law enforcement personnel, human or social services personnel, prosecutors, and court personnel in the course of normal business.

## 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.

**Posting a private image for harassment.** This crime is a class 1 misdemeanor, punishable by a fine of \$500 to \$5,000, 6 to 18 months in county jail, or both. In addition to any other criminal sentence, statute requires a fine of up to \$10,000, credited to the Crime Victim Compensation Fund. An individual whose private intimate parts have been posted may bring a civil action against the person who caused the posting and is entitled to injunctive relief, the greater of \$10,000 or actual damages, exemplary damages, and reasonable attorneys fees and costs. Between January 1, 2015, and December 31, 2017, there were 53 convictions of this offense, including 46 males and 7 females. The racial composition of these offenders was: 46 Caucasian, 3 African American, 3 Hispanic, and 1 Other.

**Posting a private image for pecuniary gain.** This crime is a class 1 misdemeanor, punishable by a fine of \$500 to \$5,000, 6 to 18 months in county jail, or both. In addition to any other criminal sentence, statute requires a fine of up to \$10,000, credited to the Crime Victim Compensation Fund. An individual whose private intimate parts have been posted may bring a civil action against the person who caused the posting and is entitled to injunctive relief, the greater of \$10,000 or actual damages, exemplary damages, and reasonable attorneys fees and costs. Between January 1, 2015, and December 31, 2017, there were two convictions of this offense. Both offenders were Caucasian males.

**Assumptions.** The fiscal note assumes there will be at least one additional conviction of each offense, as a result of the expanded definitions, per year beginning in FY 2018-19.

## State Revenue

Beginning in FY 2018-19, this bill is anticipated to increase state revenue by at least \$10,000 per year.

**Criminal fines.** The bill is anticipated to increase state revenue by at least \$10,000 per year, credited to the Fines Collection Cash Fund and Crime Victim Compensation Fund in the Judicial Department. The fine penalty for a class 1 misdemeanor offense is \$500 to \$5,000, and

the offenses affected by House Bill 18-1264 include a mandatory fine of up to \$10,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined.

**Court and administrative fees.** The bill will also increase state fee revenue credited to the General Fund and various cash funds. Fees are imposed for a variety of court-related costs, which vary based on the offense but may include probation supervision, drug or sex offender surcharges, victim compensation, and late fees, among others. Some fee revenue is shared with local governments; refer to the Local Government Impact section for additional information.

## **TABOR Refund**

The bill increases state revenue subject to TABOR by at least \$10,000 in FY 2018-19 and at least \$10,000 in FY 2019-20. State revenue is not currently expected to exceed the TABOR limit in either year and no refund is required. Therefore, the bill is not expected to impact TABOR refunds in these years. However, refunds in future years when the state next collects a TABOR surplus will be increased.

## **State Expenditures**

Beginning in FY 2018-19, this bill increases state expenditures and workload for agencies in the Judicial Department. These impacts are assumed to be minimal and are not expected to require additional appropriations for any agency within the Judicial Department at this time. If, in the future, additional appropriations are required, they can be requested through the annual budget process.

**Judicial Department.** The bill increases workload for trial courts to hear any additional cases resulting from the changes to the crime of posting a private image for harassment or the crime of posting a private image for pecuniary gain. To the extent that individuals are sentenced to probation, workload will also increase.

**Agencies providing representation to indigent persons.** Workload and costs for the Office of the State Public Defender and the Office of the Alternate Defense Counsel may increase under the bill.

**Office of the Child's Representative.** To the extent that the changes in the bill result in additional juvenile delinquency caseloads, workload will increase.

## **Local Government**

Overall, this bill is expected to increase local government revenue, workload, and costs as described below. The exact impact to a particular local government will vary depending on the number of offenses committed within its jurisdiction.

**District attorneys.** The bill increases workload and costs for district attorneys to prosecute any new offenses under the bill.

**Denver County Court revenue.** For class 1 misdemeanors committed in Denver County, criminal fine and court fee revenue is collected by Denver County Court. Because the court has discretion to impose a term of incarceration, a fine, or both, the precise impact to Denver County has not been estimated. Please refer to the State Revenue section above for information about fine penalty ranges and court fees, as well as the requirement to assess fines credited to the Crime Victim Compensation Fund.

**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. The court will try misdemeanor cases under the bill. Probation services in the Denver County Courts may also experience a minimal increase in workload and revenue to supervise persons convicted under the bill within Denver County.

**County jails.** Under current law, a court may sentence an offender to jail for a class 1 misdemeanor for a period of between 6 and `8 months. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. Estimated costs to house an offender in a county jail vary from \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.39 to house state inmates.

## Effective Date

The bill takes effect July 1, 2018, and applies to offenses committed on and after this date.

## State and Local Government Contacts

Counties  
Judicial  
Sheriffs

District Attorneys  
Local Affairs

Information Technology  
Municipalities