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REVISED FISCAL NOTE

(replaces fiscal note dated January 23, 2018)

Drafting Number: LLS 18-0603
Prime Sponsors: Sen. Kagan, Rep. Herod; Willett

Date: March 5, 2018
Bill Status: House Judiciary
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Bill Topic: MAKE SEX OFFENDER REGISTRATION MORE EFFECTIVE

- Summary of Fiscal Impact: State Revenue, State Expenditure (minimal), State Transfer, TABOR Refund, Local Government (minimal), Statutory Public Entity

The bill creates processes to remove certain offenders from the sex offender registry and removes the requirement that some sex offenders register in person. The bill reduces revenue, expenditures and workload for state and local governments if fewer individuals are prosecuted for failure to register as a sex offender.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the reengrossed bill.

Table 1
State Fiscal Impacts Under SB 18-026

Table with 3 columns: Revenue/Expenditures/Transfers, General Fund and Cash Funds, FY 2018-19, FY 2019-20. Values are mostly zero or less than \$5,000.

## **Summary of Legislation**

This bill adjusts requirements for the state's sex offender registry. It removes the requirement that a sex offender register in Colorado when the person's duty to register in the state or jurisdiction of conviction has been lawfully discontinued. In this case, a person may petition the court for an order that discontinues the requirement to register in Colorado.

**Local sex offender registration procedures.** After the initial registration, the bill allows a local law enforcement agency to waive the requirement that registration be conducted in person when the registrant has medical records that document a chronic physical or intellectual disability that creates a severe hardship for registering in person. The local law enforcement agency must reregister the offender after it verifies the registrant's address and provides written verification of the waiver to the CBI and other law enforcement agencies with which the registrant is required to register. Any agency that issues a waiver must determine that the registrant still meets the waiver requirements and reauthorize the waiver every three years. If the law enforcement agency issues or reauthorizes such as a waiver, it must also notify the victim of the offense if he or she has requested notice and provided contact information.

**Removal from the sex offender registry.** Under current law, specified registrants can petition the court to discontinue their registration. The bill clarifies that the court is required to grant a petition if the registrant has successfully completed his or her sentence, has not been convicted of a subsequent sex offense, and the required waiting period has expired, unless the victim or district attorney objects and the district attorney provides credible evidence that the registrant is likely to commit a subsequent offense of unlawful sexual behavior. The bill specifies time frames and procedures for resolving objections and making required notifications.

The bill also allows a registrant or her or her legal representative to file a petition to discontinue registration if he or she is incapacitated and is unlikely to commit a subsequent sex offense, with similar procedures for resolving objections and making required notifications to the district attorney and victim.

Upon receipt of a copy of any order discontinuing a person's duty to register as a sex offender, the Colorado Bureau of Investigation (CBI) and the local law enforcement agency must remove the person's information from the state and local sex offender registries.

## **Background**

**Sex offender registry requirements.** The Colorado Sex Offender Registration Act was enacted in 2002. It requires the registration of any person who is a temporary or permanent resident of Colorado and who:

- was *convicted* on or after July 1, 1991, of an unlawful sexual offense or enticement of a child in the state of Colorado, internet luring of a child, or an equivalent offense in another state or jurisdiction;
- was *released* on or after July 1, 1991, from the corrections department in Colorado or any other state, having served a sentence for an unlawful sexual offense, enticement of a child, Internet luring of a child, or an equivalent offense in another state or jurisdiction;
- was *convicted* on or after July 1, 1994, in the state of Colorado of unlawful sexual behavior or of another offense, the underlying factual basis of which involved unlawful sexual behavior;

- is *released* from the custody of the Colorado Department of Corrections (DOC) on or after July 1, 1994, after serving a sentence for unlawful sexual behavior or for another offense, the underlying factual basis of which involved unlawful sexual behavior;
- is *convicted* of an offense in any other state or jurisdiction for which the person is required to register in the state or jurisdiction of conviction, or for which such person would be required to register if convicted in Colorado;
- receives a disposition or is adjudicated a juvenile delinquent for committing any act that may constitute unlawful sexual behavior; or
- receives a deferred juvenile adjudication for committing any act that may constitute unlawful sexual behavior.

For the purposes of sex offender registration, any person from another state who occupies a dwelling in Colorado, including a hotel or motel, for more than 14 days in any 30-day period is considered to have established a residence. Sex offenders who live in another state but work or go to school in Colorado are considered temporary residents. Additionally, any person in the state for 14 consecutive business days, or any 30 days within a calendar year, for any reason, is a temporary resident. Sex offenders who are convicted and sentenced in Colorado but move to another state upon their release must register in that state.

Sex offenders must register with either the local chief of police or county sheriff in each and any jurisdiction in which they reside, whether in Colorado, another state, or in multiple locations. Registration must include required documentation, a current photograph, a complete set of fingerprints, and any fees required by the local law enforcement agency. The CBI within the Department of Public Safety maintains the statewide sex offender registry in Colorado.

**Failure to register as a sex offender.** Penalties for this offense vary by the controlling crime and number of prior failures to register.

- It is a class 1 misdemeanor and extraordinary risk crime to fail to register as a convicted sex offender for misdemeanor unlawful sexual behavior. The penalty for this offense is a fine of \$500 to \$5,000, a term of incarceration of 6 to 24 months in jail, or both.
- It is a class 6 felony for the first instance of failure to register as a convicted sex offender for felony unlawful sexual behavior. The penalty for this offense is a fine of \$1,000 to \$100,000, a term of incarceration in the DOC of 12 to 18 months, or both.
- Subsequent incidences of failing to register as a convicted sex offender for felony unlawful sexual behavior are a class 5 felony. A class 5 felony is punishable by a fine of \$1,000 to \$100,000, a term of 1 to 3 years in the DOC, or both.

### **Assumptions**

This analysis assumes that the process related to petitions for removing registrants from the sex offender registry outlined in this bill will not significantly alter the number of persons who request to be removed. As such, the bill does not substantially alter court workload for this aspect of the bill because courts will still have to issue findings and hold hearings. The bill is expected to reduce prosecutions for failure to register as a sex offender. As of this writing, data from which to provide an estimate on the precise impact to state and local government revenue and expenditures are not available.

## **State Revenue**

Beginning in FY 2018-19, this bill will reduce state cash fund revenue by a minimal amount.

**Criminal fines.** This bill is anticipated to reduce state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department if fewer cases of failure to register as a sex offender are prosecuted. The fine penalty for a class 5 or class 6 felony is \$1,000 to \$100,000; and \$500 to \$5,000 for a class 1 misdemeanor. 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 2017, the fiscal note assumes that any revenue reduction is likely to be less than \$5,000.

**Court and administrative fees.** If fewer cases of failure to register as a sex offender are prosecuted, court and administrative fees will also be reduced. Fees are imposed for a variety of court-related costs, which vary based on the offense and the type of court. Typical fees may include such items as probation supervision, drug or sex offender surcharges, genetic testing, victim compensation, late fees, and other administrative fees. Some fee revenue is shared with local governments; please refer to the Local Government Impact section for additional information.

## **TABOR Refund**

The bill decreases state revenue subject to TABOR by less than \$5,000 per year beginning in FY 2018-19. State revenue is not currently expected to exceed the TABOR limit in the next two fiscal years and no refund is required. However, refunds in future years when the state next collects a TABOR surplus will be reduced.

## **State Expenditures**

Beginning in FY 2018-19, overall this bill reduces workload and costs for several state agencies as described below.

**Judicial Department.** By creating a process where certain persons will no longer need to register and then petition the court for removal, the bill creates a minor reduction in workload for the courts. By reducing the number of offenders that have to register, the bill is anticipated to reduce prosecutions for failure to register by an undetermined amount. To the extent that this occurs, workload for the trial courts and costs for offices that provide representation to indigent offenders (Office of the State Public Defender and Office of the Alternate Defense Counsel) will be reduced. In addition, the bill may reduce sentences to probation and associated workload within the Probation Services division. Because it is not known how many cases this bill will affect and their current sentencing dispositions, the fiscal note assumes affected entities will request any necessary reductions in appropriations through the annual budget process.

**Department of Corrections.** To the extent that this bill results in fewer sentences to prison, costs in the DOC will be reduced. Felony failure to register as a sex offender carries the possibility of a prison sentence of between one and three years, followed by a year of parole. For informational purposes, it currently costs the DOC about \$22,000 per year to house an offender in a private prison and about \$4,500 per offender, per year for parole. The fiscal note assumes that any required reductions in appropriations will be addressed through the annual budget process.

**Colorado Bureau of Investigation.** This bill may increase workload for the CBI by a minimal amount to process requests from persons who have had their sex offender registry requirements terminated in another jurisdiction. The agency also has a one-time increase in workload in FY 2018-19 to create the waiver form for local law enforcement agencies to use.

### **Local Government Impact**

This bill affects local governments in several ways.

**Reduced sex offender registrations.** The bill reduces revenue and workload for police departments and sheriff's offices that process sex offender registrations for certain offenders. It increases workload to verify any waivers a law enforcement agency grants every three years and to notify victims of any such waivers. These impacts vary widely by jurisdiction. The Denver Police Department, for example, charges an initial registration fee of \$75 and periodic registration fee of \$25. The number of offenders the bill will apply to and which local law enforcement agencies will be impacted are unknown.

**Failure to register.** Under current law, sex offenders who have had their registration requirement terminate in another jurisdiction are required to register in Colorado and in some cases these individuals have been prosecuted for failure to register. The exact number of annual cases is not available. This analysis assumes that the bill will reduce workload for district attorneys and in cases of misdemeanor failure to register, sentences to county jail. As noted in the Background section above, a class 1 misdemeanor extraordinary risk crime carries the potential of 6 to 24 months in county jail. 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. It is assumed that the impact of this bill will be minimal.

**Denver County expenditures.** The bill results in a decrease in revenue and workload for the Denver County Court, managed and funded by the City and County of Denver. The court will try fewer misdemeanor cases under the bill, which will result in fewer fines and court fees. Probation services in the Denver County Courts may also experience a minimal decrease in workload to supervise fewer persons convicted under the bill.

### **Effective Date**

The bill takes effect August 8, 2018, if the General Assembly adjourns on May 9, 2018, as scheduled, and no referendum petition is filed.

### **State and Local Government Contacts**

Corrections	Counties	District Attorneys
Information Technology	Judicial	Local Affairs
Municipalities	Public Safety	Sheriffs