



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

HB 19-1155

FISCAL NOTE

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| Drafting Number: | LLS 19-0280 | Date: | February 7, 2019 |
| Prime Sponsors: | Rep. Michaelson Jenet; Carver | Bill Status: | House Judiciary |
| | | Fiscal Analyst: | Chris Creighton 303-866-5834 Chris.Creighton@state.co.us |

Bill Topic: ADDITIONS TO DEFINITION OF SEXUAL CONTACT

Summary of Fiscal Impact:

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| <input checked="" type="checkbox"/> State Revenue (<i>minimal</i>) | <input checked="" type="checkbox"/> TABOR Refund (<i>minimal</i>) |
| <input checked="" type="checkbox"/> State Expenditure (<i>minimal</i>) | <input checked="" type="checkbox"/> Local Government (<i>minimal</i>) |
| <input type="checkbox"/> State Transfer | <input type="checkbox"/> Statutory Public Entity |

This bill expands the definition of sexual contact. 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 introduced bill

Summary of Legislation

Under a current law sexual contact for the purpose of arousal, gratification, or abuse could result in an offender being charged with unlawful sexual contact or sexual assault on a child. Unlawful sexual contact can be a misdemeanor or felony depending on the circumstance of the crime and sexual assault a felony. This bill expands the definition of sexual contact to include:

- the knowing emission or ejaculation of seminal fluid onto any body part or clothing of the victim; or
- knowingly causing any bodily substance to contact any body part or clothing of the victim if the contact is for sexual arousal, gratification, or abuse.

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. The following sections outline data on crimes that are comparable to the offense in this bill and discuss assumptions on future rates of criminal convictions under the bill.

Prior conviction data. This bill changes the element of existing crimes by expanding the definition of sexual contact.

- *Unlawful sexual contact.* Going back three years there have been 614 total convictions for unlawful sexual contact. Of this, 579 offenders were convicted of a misdemeanor with 41 being sentenced to county jail and 35 were convicted of a felony with 4 sentenced to a term of incarceration in the Department of Corrections (DOC). Of this 566 were male and 13 were female. Demographically, 473 were White, 64 were Hispanic, 58 were African American, 12 were Asian, 5 were classified as "Other," and 2 were American Indian.
- *Sexual assault on a child.* Going back three years there have been 1,275 offenders convicted and sentenced for sexual assault on a child. Of this, 1,249 were male, 25 female, and 1 offender did identify a gender. Demographically, 1,015 were White, 126 were Hispanic, 103 were African American, 11 were Asian, 10 were classified as "Other," 8 were American Indian, and 2 did not identify a race.

Assumptions. This analysis assumes less than five cases per year will fall under the circumstances of this expanded definition. It is unknown if these convictions will be for unlawful sexual contact or sexual assault on a child. Any impact on convictions and sentencing to county jail or the DOC is assumed to be minimal.

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

State Revenue

Beginning in FY 2019-20, this bill increases state revenue by a minimal amount.

Criminal fines and court fees. By expanding the definition of the existing crime of sexual contact this bill will increase state revenue from criminal fines and court fees by a minimal amount beginning in FY 2019-20, credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. The fine penalty for unlawful sexual content can range from \$250 to \$100,000 depending on the circumstance of the crime and whether the offender is convicted and sentenced with a misdemeanor or a felony. The fine penalty for sexual assault on a child can range from \$1,000 to \$750,000. Additionally, court fees may be imposed on a case-by-case basis for a variety of court-related costs, such as probation supervision, drug surcharges, or late fees. Because the courts have the discretion of incarceration, imposing a fine, or both, a precise state revenue impact cannot be determined. Criminal fine and court fee revenue is subject to TABOR.

State Expenditures

Beginning in FY 2019-20, this bill increases costs and workload in the Judicial Department and the Department of Human Services. It may also increase state General Fund expenditures in the Department of Corrections, as discussed below.

Judicial Department. This bill will increase costs and workload for the trial courts in the Judicial Department to process additional criminal case filings. Costs and workload may also increase in the agencies that provide representation to indigent persons, including the Office of the State Public Defender and the Office of Alternate Defense Council. Additionally, costs and workload may

increase in the Office of the Child's Representative to provide representation to juveniles. If additional offenders are sentenced to probation, costs and workload in the Division of Probation will increase. Overall, it is assumed that this workload can be accomplished within existing appropriations. Should a change in funding be required for any agency or division with the Judicial Department, the fiscal note assumes it will be addressed through the annual budget process.

Department of Corrections. To the extent that this bill increases the number of persons sentenced to prison for felony unlawful sexual contact or sexual abuse of a child, costs will increase. However, at this time it is assumed that the likelihood of persons being sentenced to the custody of the DOC is minimal and that any increase in costs will be addressed through the annual budget process, if necessary.

Department of Human Services. To the extent that this bill increases the number of juveniles adjudicated of unlawful sexual contact and sentenced to the Division of Youth Services, costs will increase. This impact is assumed to be minimal and that any increase in costs will be addressed through the annual budget process, if necessary.

TABOR refunds. The bill is expected to minimally increase state General Fund obligations for TABOR refunds by in FY 2019-20. Under current law and the December 2018 Legislative Council Staff forecast, the bill will correspondingly increase the amount refunded to taxpayers via sales tax refunds on income tax returns for tax year 2020. The state is not expected to collect a TABOR surplus in FY 2020-21.

Local Government

Beginning in FY 2019-20, this bill is expected to increase local government revenue, costs, and workload 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 new offenses. 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. Based on a 2018 Joint Budget Committee Staff county jail survey, the average cost to house an offender in a county jail is \$98.83 per day, but varies significantly from \$43.65 to \$350.21 per day depending on the county. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.93.

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 unlawful sexual contact cases under the bill. Probation services in the Denver County Courts may also experience an increase in revenue, costs, and workload revenue to supervise additional persons convicted under the bill within Denver County.

County Human Services. To the extent that this bill results in more investigations for abuse and neglect related to child sexual assault cases, costs and workload will increase for county departments of human and social services.

Effective Date

The bill takes effect July 1, 2019. It applies to offenses committed on or after this date.

State and Local Government Contacts

District Attorneys Judicial