



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number: LLS 21-0013 Date: September 1, 2021
Prime Sponsors: Rep. Carver; Roberts Bill Status: Signed into Law
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Bill Topic: ENFORCEMENT OF SEXUAL EXPLOITATION OF A CHILD

- Summary of Fiscal Impact:
[X] State Revenue [ ] TABOR Refund
[X] State Expenditure [ ] Local Government
[ ] State Transfer [ ] Statutory Public Entity

This bill makes sexual exploitation of a child an extraordinary risk crime, creates a new surcharge on offenders, and updates related statutory definitions. It will increase state and local revenue and expenditures on an ongoing basis beginning in FY 2021-22.

Appropriation Summary: For FY 2021-22, the bill requires and includes an appropriation of \$1,894 to the Judicial Department. The remainder of the bill's expenditures are paid from a continuously appropriated cash fund. Currently, this bill includes a provision stating that a potential appropriation to the Department of Corrections may be required; however, the fiscal note estimates that the bill have a minimal impact on imprisonment.

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

Table 1
State Fiscal Impacts Under HB 21-1069

Table with 4 columns: Category, Description, Budget Year FY 2021-22, and Out Year FY 2022-23. Rows include Revenue, Expenditures, Transfers, and TABOR Refund.

## Summary of Legislation

This bill makes sexual exploitation of a child an extraordinary risk crime, creates a new surcharge on offenders, and updates related statutory definitions, as detailed below.

**Sexual exploitation of a child as an extraordinary risk crime.** This bill makes sexual exploitation of a child an extraordinary risk crime—which increases the maximum sentence in the presumptive sentencing range.

**Sexual Exploitation of Children Surcharge and Fund.** The bill creates the Sexual Exploitation of Children Surcharge (surcharge) and fund. Beginning January 1, 2022, all adults convicted of or receiving a deferred sentence related to sexual exploitation of a child are required to pay the surcharge in addition to the sex offender surcharge. The amount paid is based on the most serious crime in the conviction of the case, as follows:

- \$2,000 for a class 3 felony;
- \$1,000 for a class 4 felony;
- \$500 for a class 5 felony; and
- \$250 for a class 6 felony.

The surcharge is allocated as follows:

- 5 percent to the General Fund for the court's administrative costs for collecting the surcharge, subject to appropriation; and
- 95 percent to the Sexual Exploitation of Children Fund, which is continuously appropriated to the Colorado Bureau of Investigation (CBI) in the Department of Public Safety (DPS) to enhance the effective investigation and prosecution of computer-facilitated sexual exploitation of children.

The CBI may apply for gifts, grants, or donations from the federal government and any public or private source to aid this purpose.

**Modernizing sexual exploitation definitions.** The bill updates certain actions described as sexual exploitation of a child to reflect accessing and viewing sexually exploitive material.

**Post-enactment review.** The Legislative Department is required to conduct a post-enactment review of the bill.

## 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 makes sexual exploitation of a child an extraordinary risk crime. From 2018 to 2020, there have been 726 individuals convicted and sentenced for this offense. Of the persons convicted, 708 were male, 16 were female, and 2 did not have a gender identified. Demographically, 614 were White, 42 were African American, 49 were Hispanic, 5 were Asian, 5 were American Indian, and 11 were classified as "Other."

**Assumptions.** An analysis of Department of Corrections (DOC) and Colorado District Attorney Council data on sentencings under the sexual exploitation of a child statutes from FY 2018-19 and FY 2019-20 indicates that those sentenced to the DOC for sexual exploitation of a child either had another aggravating charge that increased the sentence (typically a more serious sexual assault or the defendant was a habitual offender) or they were not sentenced to the maximum of the sentencing range. It is therefore assumed that the bill will not increase overall sentence lengths or result in increased lengths of stay in the DOC. Visit [leg.colorado.gov/fiscalnotes](http://leg.colorado.gov/fiscalnotes) for more information about criminal justice costs in fiscal notes.

## State Revenue

The bill is expected to increase state revenue to the General Fund and newly created Sexual Exploitation of a Child Cash Fund by \$37,875 in FY 2021-22 (half-year impact) and \$106,050 in FY 2022-23. Collection rates are based on comparable cases where 20 or more items were involved, and assume 20 items per instance. This revenue is subject to TABOR.

The bill may also increase state revenue from gifts, grants, and donations, which have not been identified as of writing, and are not subject to TABOR.

## State Expenditures

The bill increases state expenditures by \$37,875 in FY 2021-22 and \$106,050 in FY 2022-23 in the Department of Public Safety and the Judicial Department, as shown in Table 2.

**Table 2**  
**Expenditures Under HB 21-1069**

<b>Cost Components</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>
<b>Department of Public Safety</b>		
Surcharge ( <i>Sexual Exploitation of Children Fund</i> )	\$35,981	\$100,748
<b>Judicial Department</b>		
Surcharge Administration ( <i>General Fund</i> )	\$1,894	\$5,303
<b>Total</b>	<b>\$37,875</b>	<b>\$106,051</b>

**Department of Public Safety.** Expenditures from the Sexual Exploitation of Children Fund will increase by the amounts shown in Table 2. The fund is continuously appropriated to the CBI to enhance the effective investigation and prosecution of computer-facilitated sexual exploitation of children.

**Judicial Department.** Expenditures for the Judicial Department to administer the new surcharge will increase by 5 percent, as shown in Table 2. The department will also have to perform computer programming related to the surcharge, which can be accomplished within existing appropriations. Trial courts of the Judicial Department and the independent judicial offices that represent indigent offenders are not anticipated to see an increase in workload under the bill as these cases are already charged and heard in the trial courts under current law.

**Department of Corrections operating and parole costs.** Based on the assumptions provided in the Comparable Crime Analysis section, the fiscal note assumes that the bill will not have a tangible impact on operating and parole costs for the DOC.

**Legislative Department.** Workload will increase in the legislative service agencies to perform a post-enactment review; however, no change in appropriations is required.

**TABOR refunds.** Under the December 2020 Legislative Council Staff Economic and Revenue Forecast, the state is not expected to collect revenue above the TABOR limit in either FY 2021-22 or FY 2022-23, and refund obligations are not anticipated for these years. This bill does not change these expectations concerning refunds to taxpayers.

## Effective Date

The bill was signed into law by the Governor on July 6, 2021, and takes effect on September 7, 2021, assuming no referendum petition is filed. Section 1 of the bill applies to offenses committed on or after this date.

## State Appropriations

In FY 2021-22, this bill requires an appropriation of \$1,894 from the General Fund to the Judicial Department.

No appropriation is required from the Sexual Exploitation of Children Cash Fund, which is continuously appropriated to the DPS.

Currently, this bill includes a provision stating that a potential appropriation to the Department of Corrections may be required; however, the fiscal note estimates that the bill have a minimal impact on imprisonment and that no appropriation is required.

## State and Local Government Contacts

Alternate Defense Counsel	Child Protection Ombudsman	Child's Representative
Corrections	Counties	District Attorneys
Human Services	Information Technology	Judicial
Law	Public Defender	Public Guardianship
Public Safety	Respondent Parents' Counsel	