



Legislative Council Staff

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Fiscal Note

Drafting Number:	LLS 23-0521	Date:	February 17, 2023
Prime Sponsors:	Rep. Michaelson Jenet; Bird Sen. Zenzinger	Bill Status:	House Judiciary
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Bill Topic: PENALTY FOR INDECENT EXPOSURE IN VIEW OF MINORS

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

The bill makes indecent exposure a class 6 felony offense if committed in view of a minor. The bill will increase state revenue and expenditures to the Judicial Department on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of \$54,797 to the Judicial Department.

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

Table 1
State Fiscal Impacts Under HB 23-1135

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	General Fund	\$54,797	\$70,766
	Centrally Appropriated	\$11,974	\$17,412
	Total Expenditures	\$66,771	\$88,178
	Total FTE	0.7 FTE	1.0 FTE
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$8,220	\$10,615

Summary of Legislation

Under current law, indecent exposure is a class 1 misdemeanor; but, if the perpetrator has two prior indecent exposure convictions then it is a class 6 felony. The bill makes the perpetrator's first indecent exposure offense a class 6 felony if committed in the view of a minor.

Background and Assumptions

Sentencing requirements for class 6 felony indecent exposure cases require sex offender intensive supervision probation (SOISP). Persons sentenced to probation under a misdemeanor receive non-intensive supervision. SOISP requires between 4 and 10 hours more per month in probation workload hours compared to non-intensive supervision.

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 creates a new factual basis for an existing crime. Using Judicial Department data, the following section outlines crimes that are comparable to the offense in this bill and discusses assumptions on future rates of criminal convictions resulting from the bill.

Prior conviction data. This bill reclassifies the existing offense of indecent exposure if committed in view of a minor by making the offense from a class 1 misdemeanor to a class 6 felony. From FY 2019-20 to FY 2021-22, 439 have been convicted and sentenced for the misdemeanor offense. Of the persons convicted, 427 were male, 8 were female, and 4 did not have a gender identified. Demographically, 305 were White, 94 were Black/African American, 21 were Hispanic, 6 were Asian, 2 were American Indian, 6 were classified as "other" and 5 did not have a race identified.

Assumptions. Based on an examination of victim information in indecent exposure cases, the fiscal note assumes that there will be 11 new class 6 felony cases a year for indecent exposure that are sentenced to probation on SOISP. The fiscal note assumes that sentences to the Department of Corrections will be minimal. Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Revenue

Criminal fines and court fees. By creating making a misdemeanor offense a felony offense, the bill will increase state revenue from criminal fines and court fees by a minimal amount beginning in FY 2023-24, credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. The fine penalty for a class 6 felony is \$1,000 to \$100,000 and \$500-\$1,000 for a class 1 misdemeanor. 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

The bill increases state expenditures in the Judicial Department by \$66,771 in FY 2023-24 and \$88,178 in FY 2024-25, paid from the General Fund. Expenditures are shown in Table 2 and detailed below.

**Table 2
Expenditures Under HB 23-1135**

	FY 2023-24	FY 2024-25
Judicial Department		
Personal Services	\$45,532	\$68,301
Operating Expenses	\$2,065	\$2,065
Capital Outlay Costs	\$7,070	\$400
Centrally Appropriated Costs ¹	\$11,974	\$17,412
Total Cost	\$66,771	\$88,178
Total FTE	0.7 FTE	1.0 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation

Probation. The bill will increase the number of individuals sentenced to SOISP. The total number of additional hours of probation supervision is expected to increase by 1,511 hours annually, or 0.7 FTE. This probation officer will be assisted by 0.2 FTE Judicial Support Services and 0.1 Probation Supervisor, resulting in a total of 1.0 FTE. Costs are prorated for the General Fund pay date shift and are prorated by 3 months, assuming this is the time period in which individuals will be sentenced to probation. Standard operating expenses and capital outlay costs are included.

Department of Corrections. To the extent that this bill increases the number of persons sentenced to prison for indecent exposure if committed in view of a minor, 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.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Local Government

District Attorneys may experience a slight increase in workload for cases that carry the enhanced penalty of a class 6 felony. This additional workload is assumed to be minimal. In addition, workload to the Denver County Court will decrease to the extent cases are prosecuted in district court instead of county court.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2023-24, the bill requires an appropriation of \$54,797 from the General Fund to the Judicial Department, and 0.7 FTE.

State and Local Government Contacts

Corrections
Judicial

District Attorneys

Information Technology