

**FINAL  
FISCAL NOTE**

**Drafting Number:** LLS 13-0133

**Date:** July 18, 2013

**Prime Sponsor(s):** Rep. Szabo

**Bill Status:** Postponed Indefinitely

**Fiscal Analyst:** Kerry White (303-866-3469)

**TITLE:** CONCERNING MANDATORY SENTENCING PROVISIONS FOR A DEFENDANT CONVICTED OF A SEX OFFENSE AGAINST A CHILD WHO IS FOURTEEN YEARS OF AGE OR YOUNGER.

Fiscal Impact Summary	FY 2013-2014	FY 2014-15	FY 2016-2017
State Revenue			
State Expenditures General Fund			\$145,712
FTE Position Change			
<b>Effective Date:</b> The bill was postponed indefinitely by the House State, Veterans, and Military Affairs Committee on February 13, 2013.			
<b>Appropriation Summary for FY 2013-2014:</b> See State Appropriations section.			
<b>Local Government Impact:</b> None.			

**Summary of Legislation**

This bill increases the sentence for a person who commits sexual assault against a child who is 14 years of age or younger and 7 or more years younger than the offender at the time of the offense. It requires that the court impose a minimum indeterminate sentence of 25 years of incarceration. If an offender is sentenced under the Colorado Sex Offender Lifetime Supervision (COLS) Act of 1998 and is paroled, the term of parole must be the offender's natural life.

**Background**

Under COLS, defendants who are convicted of sex offenses involving children are to be sentenced to the custody of the Department of Corrections (DOC) for an indeterminate term of at least the minimum of the presumptive range for the offense committed and a maximum of the offender's natural life. If convicted for a sex offense that constitutes a *crime of violence*, the court is required to sentence the offender to prison for an indeterminate term of at least the midpoint in the presumptive range for the offense and a maximum of the offender's natural life. If the offender committed a crime that makes him or her eligible for sentencing as a *habitual sex offender against children*, the court is required to sentence the offender to prison for an indeterminate term of at least three times the maximum of the presumptive range for the offense and a maximum of the sex offender's natural life. Current and proposed sentences under the bill are shown in Table 1, below.

<b>Table 1. Current and Proposed Sentencing Ranges for Offenses Covered Under HB13-1149</b>		
<b>Crime</b>	<b>Current Sentencing*</b>	<b>Proposed Sentencing</b>
<b>Sexual Assault, 18-3-402, C.R.S.</b> <ul style="list-style-type: none"> <li>• Class 4 felony</li> <li>• Except it is a Class 3 felony when the offender uses physical force, makes threats of physical harm or future retaliation, or uses intoxicants to cause submission.</li> <li>• Except it is a Class 2 felony when the offender has an accomplice, the victim is physically helpless, serious bodily injury occurs, or a deadly weapon is used.</li> </ul>	<p>Class 4 felony penalty requires an indeterminate sentence of 5 years to natural life. Parole is 3 years.</p> <p>Class 3 felony penalty requires an indeterminate sentence of 10 years to natural life. Parole is 5 years.</p> <p>Class 2 felony penalty requires an indeterminate sentence of 16 years to natural life. Parole is 5 years.</p>	25 years - natural life. If parole is granted, the term of parole is natural life.
<b>Sexual Assault in the First Degree 18-3-402, C.R.S. prior to July 1, 2000</b> <ul style="list-style-type: none"> <li>• Class 3 felony</li> <li>• Except it is a Class 2 felony when the offender had an accomplice, caused serious bodily injury, or used a deadly weapon.</li> </ul>	<p>Class 3 felony penalty requires an indeterminate sentence of 10 years to natural life. Parole is 5 years.</p> <p>Class 2 felony penalty requires an indeterminate sentence of 16 years to natural life. Parole is 5 years.</p>	25 years - natural life. If parole is granted, the term of parole is natural life.
<b>Sexual Assault in the Second Degree 18-3-403, C.R.S. prior to July 1, 2000</b> Class 4 felony	Class 4 felony penalty requires an indeterminate sentence of 5 years to natural life. Parole is 3 years.	25 years - natural life. If parole is granted, the term of parole is natural life.
<b>Sexual Assault on a Child 18-3-405, C.R.S.</b> <ul style="list-style-type: none"> <li>• Class 4 felony</li> <li>• Except it is a Class 3 felony when the offender uses force, threatens death or serious bodily injury, threatens retaliation, or commits the act as part of a pattern of sexual abuse.</li> </ul>	<p>Class 4 felony penalty requires an indeterminate sentence of 5 years to natural life. Parole is 3 years.</p> <p>Class 3 felony penalty requires an indeterminate sentence of 10 years to natural life. Parole is 5 years.</p>	25 years - natural life. If parole is granted, the term of parole is natural life.
<b>Sexual Assault on a Child by One in a Position of Trust 18-3-405.3, C.R.S.</b> Class 3 felony, crime of violence	Class 3 felony penalty requires an indeterminate sentence of 10 years to natural life. Parole is 5 years.	25 years - natural life. If parole is granted, the term of parole is natural life.

*\*These penalties are increased if the offender qualifies for sentencing as a habitual sex offender against children.*

### **State Expenditures**

This bill is anticipated to increase state General Fund expenditures by an estimated \$728,558 per year beginning in FY 2016-17 for the DOC. However, this amount is pro-rated in FY 2016-17 to \$145,712. This increase assumes 63 offenders convicted of class 3 felonies and 35 offenders convicted of class 4 felonies per year will serve longer prison sentences. Currently, the estimated

length of stay for class 3 felony sex offenders convicted of offenses involving children under the age of 15 is 167.4 months, which would increase to 300.0 months, assuming no other changes in parole (i.e. parole granted at the same rate as it is currently granted). Similarly, the estimated length of stay for class 4 felony sex offenders convicted of offenses involving children under the age of 15 would increase from 45.6 months to 300.0 months.

Current law prohibits the General Assembly from passing any bill to increase periods of imprisonment in state correctional facilities without appropriating an amount sufficient to cover the increased capital construction and operating costs of the bill in each of the first five fiscal years. However, current law also allows the DOC to place offenders classified as medium custody and below in private contract prisons, for which no state capital construction costs are incurred.

Offenders sentenced under this bill to DOC may be placed in either a state-run or a private contract prison, depending on several factors. Any offenders that *must* be housed in a state-run prison will likely require a shift of other inmates in that facility to private contract prisons. Therefore, this fiscal note assumes that the impact of this bill will be accommodated through the use of private contract prisons, and that no new capital construction funds are necessary.

Offenders placed in a private contract prison cost the state about \$57.03 per offender per day, including the current daily rate of \$52.69 and an estimated \$4.34 per offender per day for medical care provided by the DOC. Table 2 shows the estimated cost of the bill over the next five fiscal years.

<b>Fiscal Year</b>	<b>Inmate Bed Impact</b>	<b>Construction Cost</b>	<b>Operating Cost</b>	<b>Total Cost</b>
FY 2013-14	0.0	\$0	\$0	\$0
FY 2014-15	0.0	0	0	0
FY 2015-16	0.0	0	0	0
FY 2016-17	0.0	0	145,712	145,712
FY 2017-18	0.2	0	728,558	728,558
<b>Total</b>		<b>\$0</b>	<b>\$874,270</b>	<b>\$874,270</b>

Costs will also increase for the DOC to extend the period of required parole. Under COLS, mandatory parole is either 10 years to natural life for a class 4 felony or 20 years to natural life for a class 3 felony. This bill extends mandatory parole for all of these offenders to natural life. As of this writing, none of the existing offenders under COLS have discharged their parole and, therefore, no data exists from which to calculate the potential increase in parole supervision costs.

**Judicial.** This bill could increase workload for the courts. Generally, increased criminal penalties increase the likelihood a case will go to trial. However, because of the seriousness of these cases, it is likely that most cases are already being adjudicated. Therefore, any impact to the Judicial Department is anticipated to be minimal and will not require additional appropriations.

**State Appropriations**

The Department of Corrections requires the five-year costs of \$874,270 General Fund, as detailed in Table 2.

**Departments Contacted**

Corrections

District Attorneys

Judicial

Local Affairs