

**STATE
FISCAL IMPACT**

Drafting Number: LLS 14-0647
Prime Sponsor(s): Rep. Stephens

Date: February 25, 2014
Bill Status: House Judiciary
Fiscal Analyst: Kerry White (303-866-3469)

SHORT TITLE: REVENGE INTERNET POSTING INTIMATE PHOTOS

| Fiscal Impact Summary* | FY 2014-2015 | FY 2015-2016 |
|---|--|--------------|
| State Revenue Cash Funds | Potential increase or decrease. | |
| State Expenditures General Fund | Potential workload increase and cost decrease. | |
| FTE Position Change | | |
| Appropriation Required: None. | | |

* This summary shows changes from current law under the bill for each fiscal year.

Summary of Legislation

This bill makes it a class 5 felony to post online or otherwise publish an intimate photo taken of a person under the age of 18. The bill defines intimate photos as including those that show the victim's uncovered genitals, buttocks, anus, or female breasts. The photo must have been obtained as a result of a relationship or sexual contact with the victim and made public with the intent to embarrass, coerce, bully, annoy, or cause emotional distress. In addition to any other sentence imposed, the court is required to levy a minimum fine of \$10,000 for an offense. If a person is convicted of this offense, the court is to order that the offender or entity where the photos are posted or published remove them.

Background

Under current law, posting an intimate photograph of a minor is chargeable as the crime of sexual exploitation of a minor, which is a class 3 felony. This bill only addresses the crime of publishing the photographs and is distinct from possession of pornography or other sexual behaviors included in the crime of sexual exploitation of a minor. There are four people currently incarcerated in the Department of Corrections (DOC) who were convicted of sexual exploitation of a minor whose cases included taking and uploading intimate photos, among other sexual acts. No information is known about the number of persons who only published intimate photos.

State Revenue

Beginning in FY 2014-15, this bill has an indeterminate impact on state revenue. If a person would have otherwise been convicted of a class 3 felony and given a fine penalty greater than \$10,000 is instead convicted of a class 5 felony, revenue will decrease. If a person would

have been given a fine penalty below \$10,000, revenue will increase. The fine penalty for a class 3 felony is \$3,000 to \$750,000, the amount of which imposed, if any, is discretionary. The fine penalty for a class 5 felony is \$1,000 to \$100,000, although HB14-1104 requires a minimum mandatory fine of \$10,000 for all convictions.

State Expenditures

Beginning in FY 2014-15, this bill may decrease costs for the DOC. Workload for the Judicial Department may also increase, as discussed below.

Department of Corrections. Depending on the circumstances of a case, this bill could reduce sentences to the DOC. If a person is convicted of the new class 5 felony instead of the existing class 3 felony, costs will decrease. The average length of stay for a class 3 felony sex offense is 104.1 months, compared to the average 35.3 months for a class 5 felony sex offense. As of this writing, not enough information about the rate of this crime was available to determine whether this is likely to occur, and therefore, it is not possible to determine the impact on state expenditures. For reference purposes, offenders placed in a private contract prison cost the state about \$58.86 per offender per day (\$21,484 per year), including the current daily rate of \$53.74 and an estimated \$5.12 per offender per day for medical care provided by the DOC.

Judicial Department. To the extent that this bill causes persons that would have otherwise been convicted of a class 3 felony to instead be convicted of a class 5 felony and sentenced to probation, workload for the Judicial Department may increase. No change in workload for the trial courts is anticipated. The fiscal note assumes that any increase in workload for probation will not require an increase in appropriations.

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., 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 the existing crime that creates a new factual basis for the offense. The crime proposed under HB14-1104 is currently charged as sexual exploitation of a minor, which is a class 3 felony. There are currently 28 people incarcerated for sexual exploitation of a minor, including four who took and uploaded photos, but this offense often includes other sexual acts and may not be representative of the number of persons who would be convicted of the behavior prohibited under HB14-1104.

Effective Date

The bill takes effect July 1, 2014, and applies to offenses committed on or after that date.

State and Local Government Contacts

Corrections
Judicial

Counties
Municipalities

District Attorneys
Sheriffs