

**STATE
FISCAL IMPACT**

Drafting Number: LLS 14-0311	Date: February 21, 2014
Prime Sponsor(s): Rep. Foote Sen. Johnston	Bill Status: House SVMA Fiscal Analyst: Kerry White (303-866-3469)

SHORT TITLE: PENALTIES FOR SEX OFFENSES AGAINST A CHILD UNDER 12

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue		
State Expenditures	Increase. See State Expenditures section.	
General Fund		
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 requires the court to provide an indeterminate sentence for a class 2, class 3, or class 4 felony sex offense when the act includes sexual intrusion or sexual penetration against a child under the age of 12 when the offender was an adult and at least ten years older than the child. Under the bill, sentencing for these sex offenses varies by felony class level, as follows:

- at least 10-16 years and up to a maximum of natural life for a class 4 felony;
- at least 18-32 years and up to a maximum of natural life for a class 3 felony; and
- at least 24-48 years and up to a maximum of natural life for a class 2 felony.

Background

There is no specific crime of sexual assault against a child under the age of 12 with an adult offender who is at least ten years older. Under current law, this behavior can be charged as:

- sexual assault under section 18-3-402 (1)(d), C.R.S.;
- unlawful sexual contact under section 18-3-404 (2)(b), C.R.S.;
- sexual assault on a child under section 18-3-405, C.R.S.; or
- sexual assault on a child by one in a position of trust under section 18-3-405.3 (2), C.R.S.

Most of the above offenses are either a class 3 or a class 4 felony, depending on the circumstances (sexual assault can also be a class 2 felony). Generally, all of the above offenses are crimes of violence and are subject to the Colorado Sex Offender Lifetime Supervision Act of 1998 (COLS). For a class 2 felony, the sentence ranges from 16 years to natural life and the average length of stay is 480 months. For a class 3 felony, the sentence ranges from 10 years to

natural life and the average length of stay is 104.1 months. For a class 4 felony, the sentence ranges from 5 years to natural life and the average length of stay is 52.9 months. Under COLS, parole is for life, but an offender can be discharged from parole after 10 years at the discretion of the Department of Corrections (DOC).

The fiscal note assumes that the charges most similar to the behavior described in this bill are for sexual assault on a child or sexual assault on a child by one in a position of trust. Between January 1, 2010, and December 31, 2013, there were a total of 1,805 cases filed related to those offenses, or about 601 cases per year. In FY 2012-13, the DOC admitted about 184 offenders for all of these offenses. Of this number, there were a total of 35 offenders admitted to custody for offenses that had all the required elements of HB14-1260, including 24 offenders convicted of a class 3 felony and 11 offenders convicted of a class 4 felony. No offenders were convicted of a class 2 felony.

State Expenditures

Overall, this bill could increase workload for the Judicial Department as of FY 2014-15. Costs will increase for the Department of Corrections beginning in FY 2019-20.

Judicial Department. Beginning in FY 2014-15, this bill could increase workload for the trial courts, Office of the State Public Defender, and the Office of the Alternate Defense Counsel. To the extent that the prospect of enhanced sentencing causes more defendants to seek a trial, workload will increase for the trial courts. If these defendants are indigent, workload and costs will increase for the Office of the State Public Defender or the Office of the Alternate Defense Counsel. The fiscal note assumes that any increase will not require an increase in state appropriations.

Department of Corrections. The fiscal note assumes that 35 people per year will be sentenced to serve longer sentences. The effect of the bill is to increase the length of stay for someone who would have otherwise served 52.9 months for a class 4 felony by 103.1 months. A person who would have served 104.1 months for a class 3 felony will serve an additional 195.9 months in prison (assuming he or she serves the midpoint of the sentencing presumptive range). A person who is convicted of a class 2 felony will not experience a change in the length of stay. Based on the current population, beginning in FY 2019-20, costs will increase. It currently costs the DOC about \$21,484 per year to incarcerate an offender. In addition to prison beds, the bill will affect parole costs for these offenders.

Because costs for the DOC are well into the future, no adjustment in appropriations is currently required under the bill. The fiscal note assumes the DOC will request additional appropriations beginning in FY 2019-20.

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

District Attorneys

Judicial