

**FINAL
FISCAL NOTE**

Drafting Number: LLS 14-0003
Prime Sponsor(s): Rep. Szabo
 Sen. Herpin

Date: May 14, 2014
Bill Status: Postponed Indefinitely
Fiscal Analyst: Kerry White (303-866-3469)

SHORT TITLE: JESSICA'S LAW

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue		
State Expenditures		
General Fund	Workload increase. Cost increase as of FY 2019-20.	
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 creates the new crime of lewd molestation when a person over the age of 18 touches a child under the age of 12 to obtain sexual gratification. Any offender convicted of this unclassified felony crime is provided with a mandatory, indeterminate sentence of 25 years to natural life in prison. If the offender is paroled, the Department of Corrections (DOC) is not permitted to discharge the person's sentence of incarceration and must supervise the offender for natural life.

Background

Under current law, the offense described in this bill can be charged under other portions of statute. According to the Colorado District Attorneys' Council, and depending on the circumstances of the case, offenses 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 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 DOC.

The fiscal note assumes that the charges most similar to the offense created under the 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 46 offenders admitted to custody for offenses that had all the required elements of HB14-1264, including 31 offenders convicted of a class 3 felony and 15 offenders convicted of a class 4 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 mandatory 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 any increase will not require an increase in state appropriations.

Department of Corrections. The fiscal note assumes that 46 people per year will be sentenced to serve 25 years to natural life. 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 247.1 months. A person who would have served 104.1 months for a class 3 felony will serve an additional 195.9 months in prison. 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. Under the bill, the DOC is also required to supervise each offender for natural life and may not discharge an offender from parole. This cost has not been estimated.

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.

Local Government Impact

To the extent that more defendants seek a trial in the future, costs and workload for district attorneys will increase. Costs for county jails could also increase if defendants are held in custody pending trial. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails at a daily rate of \$51.45 to house state inmates. It is assumed that the impact of this bill will be minimal.

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. This bill establishes a new unclassified felony for a subset of behaviors currently

charged as sexual assault, unlawful sexual contact, sexual assault on a child, or sexual assault on a child by one in a position of trust. As discussed in the Background section above, the fiscal note assumes this offense most closely relates to sexual assault on a child or sexual assault on a child by one in a position of trust. There are about 601 cases filed per year and 184 offenders were sentenced to prison for these crimes in FY 2012-13. According to data provided by the DOC, about 46 offenders are convicted each year of the more narrow behavior prohibited under HB14-1264. As of this writing, no gender or minority data was available.

Effective Date

The bill was postponed indefinitely by the House State, Veterans, and Military Affairs Committee on March 3, 2014.

State and Local Government Contacts

Corrections

District Attorneys

Human Services

Judicial