

Colorado Legislative Council Staff Fiscal Note

**FINAL
FISCAL NOTE**

Drafting Number: LLS 14-0933	Date: May 27, 2014
Prime Sponsor(s): Sen. Kerr; Newell Rep. Young	Bill Status: Lost in Senate
	Fiscal Analyst: Kerry White (303-866-3469)

SHORT TITLE: DRUG-ENDANGERED CHILD CRIMINAL CODE

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue		
Cash Funds	at least \$5,000	at least \$5,000
State Expenditures		
General Fund	Minimal workload increase.	
FTE Position Change		
Appropriation Required: None.		

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

** These costs are not included in the bill's appropriation. See the State Expenditures section for more information.

Summary of Legislation

The bill creates a new basis for the crime of child abuse for the following acts, when such acts pose a threat of injury to a child's life or health:

- in the presence of a child, or on the premises where a child is found or resides, or in a vehicle containing a child, a person knowingly and unlawfully distributes or obtains, or attempts to distribute or obtain, a controlled substance;
- a parent or lawful guardian of a child or a person having the care or custody of a child knowingly or recklessly allows the child to be present in any location where a person unlawfully distributes or obtains, or attempts to distribute or obtain, a controlled substance; or
- in the presence of a child, or on the premises where a child is found or resides, or in a vehicle containing a child, a person knowingly cultivates, produces, possesses, uses a controlled substance, or attempts any of these activities.

Each of the prohibited acts are punishable as a class 1 misdemeanor, except when a person has been previously convicted of child abuse and the court finds certain conditions (described in the Background Section) have been met. SB 14-178 adds new aggravating circumstances to these conditions. If the defendant committed a continued pattern or creates a situation in which a child is drug-endangered by committing any of the newly prohibited acts, the offense is punishable as a class 5 felony.

The bill clarifies that it is not a defense to the crime of child abuse that the defendant did not know a child was present, a child could be found, a child resided on the premises, or that a vehicle contained a child.

Background

Child abuse. Current law includes certain drug-related activities as a basis for the crime of child abuse. These include:

- manufacturing or attempted manufacturing of a controlled substance;
- knowingly possessing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, with the intent to use the product as an immediate precursor in the manufacture of a controlled substance;
- allowing a child to be present or reside at a premises or be in a vehicle where the parent, guardian, or person having care or custody of the child knows or reasonably should know another person is engaged in the manufacture or attempted manufacture of methamphetamine; and
- allowing a child to be present or reside at a premises or be in a vehicle where the parent, guardian, or person having care or custody of the child knows or reasonably should know another person possesses ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, with the intent to use the product as an immediate precursor in the manufacture of methamphetamine.

The penalty for these offenses is a class 3 felony. Depending on the presence of or severity of injuries to the child, current penalties for child abuse range from a class 2 felony to a class 3 misdemeanor. Current law also provides that when a person acts knowingly or recklessly and the child abuse results in any injury other than serious bodily injury, it is a class 1 misdemeanor, except in certain circumstances, when it is a class 5 felony. These circumstances are triggered when a person has been previously convicted of child abuse or an offense that would be considered child abuse in another location within the United States and the court finds the new offense involved any of the following acts:

- the defendant, who was in a position of trust, participated in a continued pattern of conduct that resulted in the child's malnourishment or failed to ensure the child's access to proper medical care;
- the defendant participated in a continued pattern of cruel punishment or unreasonable isolation or confinement of the child;
- the defendant made repeated threats of harm or death to the child or to a significant person in the child's life, in the presence of the child;
- the defendant committed a continued pattern of acts of domestic violence in the presence of the child; or
- the defendant participated in a continued patterns of extreme deprivation of hygienic or sanitary conditions in the child's daily living environment.

Controlled substances. Colorado law defines a controlled substance as any drug, substance, or immediate precursor included in schedules I through V (see article 18 of title 18, Colorado Revised Statutes), including cocaine, marijuana, marijuana concentrate, a cathinone, any synthetic cannabinoid, and salvia divinorum.

State Revenue

Beginning in FY 2014-15, this bill is anticipated to increase state revenue by at least \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a class 5 felony is \$1,000 to \$100,000 and the fine penalty for a class 1 misdemeanor is

\$500 to \$5,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to state revenue cannot be determined. The fiscal note assumes that the majority of new cases will be class 1 misdemeanors.

State Expenditures

Overall, this bill may increase state expenditures and workload. Based on the low number of existing drug-related child abuse offenses (see the Comparable Crime Section, below), the fiscal note assumes that any such increases will be minimal and will not require an increase in appropriations for any state agency.

Judicial Department. To the extent that this bill results in additional filings and sentences to probation, workload for courts and the probation division may increase by a minimal amount.

Office of the State Public Defender and Office of Alternate Defense Counsel. For defendants that are determined to be indigent, workload for the Office of the State Public Defender (OSPD) may increase by a minimal amount. If the OSPD has a conflict, costs for the Office of the Alternate Defense Counsel (ADC) may increase. ADC's average costs are \$669 per case for a class 1 misdemeanor and \$1,182 for a class 5 felony.

Department of Corrections. To the extent that an offender is convicted of child abuse as a result of SB 14-178, met the conditions of a class 5 felony, and was sentenced to the Department of Corrections (DOC), costs will increase. The current average length of stay for offenders convicted of a class 5 felony involving violence is 25.1 months, and the current average length of stay is 19.7 months for a class 5 felony involving drugs. Offenders placed in a private contract prison cost the state about \$58.86 per offender per day, including the current daily rate of \$53.74 and an estimated \$5.12 per offender per day for medical care provided by the DOC.

No impact is expected in the first year because of the estimated time for criminal filing, trial, disposition, and sentencing. Because there have been so few offenses committed during the last five years, and only one of these cases involved a prior offense that didn't trigger sentencing to the DOC, the fiscal note assumes that no additional appropriations are required. If persons are sentenced to prison in the future, the DOC will request appropriations through the annual budget process.

Local Government Impact

This bill affects local governments in two ways. First, it may increase jail costs as a result of persons convicted of a class 1 misdemeanor for the behaviors prohibited by the bill. It may also increase revenue and costs for Denver County. Based on the low number of existing drug-related child abuse offenses, the fiscal note assumes that the impact of this bill will be minimal.

Jail costs. This bill impacts local governments by creating new bases for the crime of child abuse, which are a class 1 misdemeanor unless certain conditions are met. The penalty for a class 1 misdemeanor is 6 to 18 months in a county jail, a fine of \$500 to \$5,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. 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.

Denver County. The bill may also affect revenue and probation costs for Denver County, which maintains a separate county court system from the rest of the state.

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. Since January 1, 2009, there have been eight convictions of drug-related child abuse, including:

- four for child abuse, manufacturing a controlled substance;
- three for child abuse, possession of a methamphetamine precursor; and
- one for child abuse, another possession of a methamphetamine precursor.

Three of these cases included a sentence to the DOC and five were given an alternate sentence. The case involving a prior conviction was charged as a class 4 felony and did not include a sentence to prison. As of this writing, gender and minority data was not available. Based on the low number of current offenses (averaging just under two per year), the fiscal note assumes that the impact of this bill will be minimal and that the majority of new cases charged under the bill will be class 1 misdemeanors.

Effective Date

The bill was lost on second reading in the Senate on April 29, 2014.

State and Local Government Contacts

Corrections
Human Services
Sheriffs

Counties
Judicial

District Attorneys
Municipalities