

Updated to reflect amendments adopted through April 29, 2009.

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES *				
	FY 2009-10		FY 2010-11	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS	76,000	76,000	76,000	76,000
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	76,000	76,000	76,000	76,000

*Does not include any impact on political subdivisions. See narrative for political subdivision estimates.

This bill, as amended, would change provisions relating to foreign corporations and provisions and penalties relating to certain sex offenders.

The amended bill would prohibit any individual who has been convicted of a felony or any crime involving moral turpitude from providing transportation services for vulnerable adults or persons under the age of 19 under contract with the Department of Health and Human Services. The individual providing transportation would be required to have a national criminal history information check done through the State Patrol with the cost paid for by the party requesting the background check. The State Patrol would inform HHS of the results in writing.

The State Patrol would have increased revenue and increased costs. The cost for criminal history checks is \$38. Of the \$38 fee, \$15 is retained by the State Patrol for their costs and the balance of \$23 is paid to the F.B.I. The revenue generated and retained by the state would be used to pay for processing costs, including additional personnel. The potential number of transportation providers who could require this check is estimated at up to 2,000. The increased revenue and expenses is estimated at up to \$76,000.

The amended bill has the emergency clause.

The Supreme Court estimates no fiscal impact.

The Department of Correctional Services (DCS) states the following regarding this bill:

1. Section 28-311 adds ‘attempts to solicit, coax, entice or lure’ to the section prohibiting luring a child under the age of 14 to enter into any vehicle. The crime is criminal child enticement and would be a Class IIIA felony (0-5 yrs) instead of a Class I Misdemeanor (0-1 yr). The enhancement penalty changes to a Class III felony (1-20 yrs) from a Class IV felony (0-5), and adds to the offenses (if previously convicted of criminal child enticement, sex assault of a child in the 1st degree, 2nd degree, or 3rd degree, kidnapping, or false imprisonment, or assault under 28-308, 29-309, or 28-310) of child enticement by means of an electronic communication device...”

Fiscal Impact: 1. Criminal Child Enticement – There were three admissions in FY2007, three admissions in FY2008, and one so far in FY2009. Since the maximum changes but not the minimum, it is likely that there would be more admissions for a longer time, but the specific impact is not determinable. There have not been any enhanced penalty admissions during the above time frame.

2. The bill changes the word ‘computer’ to ‘electronic communication device’ in section 28-320.02 (no person shall solicit, lure, coax or entice a child 16 years of age or younger to engage in a sex act), and increases the penalty from a Class IIIA felony (0-5 yrs) to a Class 1D felony (3–50 yrs). The bill also increases the enhanced penalty if previously convicted under a number of existing statutes and additional sections (possession of or creation of, distribution of, intent to deliver, etc visual depiction of sexually explicit conduct with a child as participant or observer; or enticement of a child (under 16) by electronic communication device) to a Class 1C felony (5-50 yrs) from the current Class III felony (1-20 yrs).

Fiscal Impact: 2. 28-320.02 -Child enticement by computer – There were two admissions in FY2007, seven admissions in FY2008, and 1 so far in FY2009. The minimum sentence changes to 3 years from 0 years, and the maximum changes from five years to 50 years. Assuming four admissions per year, the minimum served would increase by 1.5 year per person, or by

six years total. However, it is unknown how many individuals were convicted and served no time that now would have a minimum sentence to serve. Also, since the maximum changes dramatically, is likely that the sentenced admissions would be for a longer maximum time period, but the specific impact is not determinable. . There have not been any enhanced penalty admissions during the above time frame.

3. Creates a new offense of unlawful use of the internet by a prohibited sex offender. The bill adds new language specifying that anyone required to register as a sexually violent predator, or required to register because of a conviction for one or more of the offenses in Section 6 of the bill, or for an equivalent offense in another state, who knowingly and intentionally uses a social networking site or service, instant messaging, or chat room service that allows a person less than age 18 to access or use the site, IM or chat room service is guilty of the above offense. The offense is a Class I Misdemeanor (0-1 yr) for the 1st offense and a Class IIIA felony (0-5 yrs) under subsequent offenses.

Fiscal Impact: 3. DCS is unable to determine the fiscal impact of this new offense – unlawful use of the internet by a prohibited sex offender. 1st offenders (Class I misdemeanor) are likely not to serve their sentence in DCS facilities unless they were convicted of the maximum time, and it is unknown how many offenders would be convicted of second or subsequent offenses.

4. Visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

a) shall be unlawful to knowingly possess – Currently a class IV felony The bill changes the law to add “appears to have a child” and increases the penalty to a Class III felony (1-20 yrs) for each offense. Also enhances the penalty to Class IC if the person has previously been convicted of this section or other sex offenses as listed.

b) shall be unlawful to knowingly make, publish, direct, create, provide or in any manner generate any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers. Increases the penalty from a Class III felony (1-20 years) to a Class ID felony (3-50 years)

c) shall be unlawful to purchase, rent sell, deliver etc (see 28-1463.03) or employ, force, authorize, induce or cause a child to engage in, or for a parent or guardian to consent to such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers. The bill changes the law to add “appears to have a child” Increases the penalty from a Class III felony (1-20 years) to a Class ID felony (3-50 years). Also enhances the penalty to Class IC if the person has previously been convicted of this section or other sex offenses as listed.

d) shall be unlawful for a person to possess with intent to rent, sell, deliver, distribute, trade or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers. The bill changes the law to add “appears to have a child”. The penalty remains a Class IIIA offense, but provides the same enhanced penalty (Class IC felony) if previous convictions of this law or the sections listed.

Fiscal Impact: 4. Visual depiction of sexually explicit conduct - there were 10 admissions in FY2007, seven admissions in FY2008, and six admissions year to date for this offense. With the increase in the minimum sentence from 0 years to three years for most of these offenses, the minimum time served would increase by 1.5 year per offender. Assuming 11 admissions each year, the minimum time served would increase by 16.5 years total. Also, since the maximum changes dramatically, is likely that the sentenced admissions would be for a longer maximum time period, but the specific impact is not determinable. . There have not been any enhanced penalty admissions during the above time frame.

5. Adds “incest under section 28-703 ‘as one of the offenses for which there shall not be any time limitations for prosecution or punishment.

Fiscal Impact: 5. No time limitation for prosecution for incest – DCS has had one admission in FY2007, seven admissions in FY2008, and five admissions in FY2009 to date. This offense is a Class III felony (1-20 years). It is unknown how many prosecutions and convictions would occur with no statute of limitations on this offense.

DCS current inmate population is 4401 (3/05/2009). The FY08 per diem (cost per day of feeding, clothing, housing, medical, etc) for an individual inmate was \$5,509 per year.