

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 12-0784 **Date:** March 27, 2012
Prime Sponsor(s): Sen. Mitchell; Steadman **Bill Status:** Senate Judiciary
 Rep. Beezley; Levy **Fiscal Analyst:** Jessika Shipley (303-866-3528)

TITLE: CONCERNING CHANGES TO IMPROVE OUTCOMES FOR PERSONS CONVICTED OF POSSESSION OF CERTAIN CONTROLLED SUBSTANCES CRIMES, AND, IN CONNECTION THEREWITH, ESTABLISHING A MISDEMEANOR PENALTY FOR POSSESSION OF CONTROLLED SUBSTANCES, REQUIRING A POST-ENACTMENT REVIEW OF THE IMPLEMENTATION OF THIS ACT, AND MAKING AN APPROPRIATION.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue Drug Offender Surcharge Cash Fund or Correctional Treatment Cash Fund (depending on the passage of SB 12-104)	\$22,020	\$29,894
State Transfers or Diversions Transfer from the General Fund to the Drug Offender Surcharge Cash Fund or the Correctional Treatment Cash Fund (depending on the passage of SB 12-104)	\$990,818	\$2,212,563
State Expenditures General Fund	(\$990,818)	(\$2,212,563)
Cash Funds Drug Offender Surcharge Cash Fund or Correctional Treatment Cash Fund (depending on the passage of SB 12-104)	990,818	2,212,563
FTE Position Change	(17.2 FTE)	(5.8) FTE

Effective Date: The bill takes effect July 1, 2012, except that sections 4 and 5 take effect only if Senate Bill 12-104 does not become law and sections 6 and 7 take effect only if Senate Bill 12-104 does become law. The bill applies to offenses committed on or after July 1, 2012.

Appropriation Summary for FY 2012-2013: For FY 2012-13, the Department of Human Services will require a General Fund appropriation of \$17,500. The Judicial Branch will require a General Fund reduction of \$997,818 and 17.0 FTE. The Office of the State Public Defender will require a General Fund reduction of \$10,500 and 0.2 FTE. Finally, \$990,818 should be appropriated to the Drug Offender Surcharge Cash Fund or the Corrections Treatment Cash Fund, depending on the passage of Senate Bill 12-104.

Local Government Impact: See Local Government Impact section.

Summary of Legislation

This bill reduces the crime classification and penalties for certain drug-related offenses, as shown in Table 1:

Table 1. Changes in Crime Classification and Penalties for Drug Offenses Under SB 12-163		
Offense	Current Classification and Penalty	Proposed Classification and Penalty
Unlawful possession of 4 grams or less of flunitrazepam, ketamine, or any schedule I or II substance	Class 6 felony 1 year to 18 months in prison, a fine of \$1,000 to \$100,000, or both	Class 1 misdemeanor 6 to 18 months in a county jail, a fine of \$500 to \$5,000, or both
Unlawful possession of more than 4 grams of flunitrazepam, ketamine, or any schedule I or II substance	Class 4 felony 2 to 6 years in prison, a fine of \$2,000 to \$500,000, or both	Class 6 felony 1 year to 18 months in prison, a fine of \$1,000 to \$100,000, or both
Unlawful possession of 2 grams or less of methamphetamine	Class 6 felony 1 year to 18 months in prison, a fine of \$1,000 to \$100,000, or both	Class 1 misdemeanor 6 to 18 months in a county jail, a fine of \$500 to \$5,000, or both
Unlawful possession of more than 2 grams of methamphetamine	Class 4 felony 2 to 6 years in prison, a fine of \$2,000 to \$500,000, or both	Class 6 felony 1 year to 18 months in prison, a fine of \$1,000 to \$100,000, or both

***Note that attempt or conspiracy to commit a class 4 felony is a class 5 felony; attempt or conspiracy to commit a class 6 felony is a class 6 felony; and attempt or conspiracy to commit a class 1 misdemeanor is a class 2 misdemeanor.**

The savings generated by the bill are to be appropriated to the Drug Offender Surcharge Fund (if Senate Bill 12-104 does not pass) or the Correctional Treatment Cash Fund (if Senate Bill 12-104 does pass), and are to be used for substance abuse assessment, testing, education, and treatment. The bill requires a post-enactment review by legislative service agencies after two years that considers the impact of the bill on jail populations and the amount of funding for jail-based treatment programs attributable to the savings.

Finally, the Department of Human Services is required to develop a training program for trauma-informed substance abuse treatment and best practices by June 30, 2013. The training program will be made available to licensed substance abuse treatment programs.

State Revenue

State revenue is expected to increase as a result of lowering the penalty levels for the crimes enumerated by the bill. While the surcharge for the lower-penalty crimes is lower, the collection rate is significantly higher. Such revenue is currently deposited into the Drug Offender Surcharge Fund. If Senate Bill 12-104 passes, that fund will be replaced with the Correctional Treatment Cash Fund. Because it takes time for crimes to be committed and investigated and for trials to be completed, the fiscal note assumes that it will take three years for convictions to ramp up to their eventual total annual number. It is estimated that 46 percent of offenders will be convicted on or after the effective date of the bill in FY 2012-13; 87 percent in FY 2013-14; and 100 percent by FY 2014-15. Table 2 illustrates the change in revenue over the first three years.

Table 2. Change in State Revenue Collections Under SB 12-163							
	Current			Proposed			Estimated Change
	Existing Assessed Totals	First Year Collection Rates	Revenue Estimate	New Assessed Totals	First Year Collection Rates	Revenue Estimate	
Year 1							
F6 to M1	\$557,750	10%	\$55,775	\$446,200	19%	\$84,778	\$29,003
F4 to F6	253,920	9%	22,853	158,700	10%	15,870	(6,983)
Year 1 Total							\$22,020
Year 2							
F6 to M1	\$1,054,875	10%	\$105,488	\$843,900	19%	\$160,341	\$54,853
F4 to F6	480,240	9%	43,222	300,150	10%	30,015	(13,207)
Additional Revenue Collected in Year 2 from Year 1 Assessments							(11,753)
Year 2 Total							\$29,894
Year 3							
F6 to M1	\$1,212,500	10%	\$121,250	\$970,000	19%	\$184,300	\$63,050
F4 to F6	552,000	9%	49,680	345,000	10%	34,500	(15,180)
Additional Revenue Collected in Year 3 from Year 1 and Year 2 Assessments							(8,480)
Year 3 Total							\$39,390

State Transfers or Diversions

In FY 2012-13, the bill requires the transfer of an estimated \$990,818 in savings from the General Fund to the Drug Offender Surcharge Cash Fund or the Corrections Treatment Cash Fund, depending on the passage of Senate Bill 12-104. For FY 2013-14, the savings transfer will be approximately \$2,212,563.

State Expenditures

There are a number of costs and savings attributable to the bill. These are explained in detail by department in the following sections. Table 3 provides a summary.

Table 3. Summary of Expenditures and Savings Under SB 12-163				
Department	FY 2012-13	FTE	FY 2013-14	FTE
Corrections	\$0	0	(\$1,118,148)	0
Human Services	17,500	0	0	0
Judicial (trial court savings)	(997,818)	(17)	(1,085,699)	(17)
Judicial (probation costs)	0	0	742,784	11.4
Public Defender	(10,500)	(0.2)	(10,500)	(0.2)
Public Safety	0	0	(741,000)	0
Total	(\$990,818)	(17.2)	(\$2,212,563)	(5.8)

Department of Corrections (DOC). General Fund expenditures in the DOC will decrease by \$1,118,148 in FY 2013-14, as part of the five-year savings shown in Table 4. Beginning in the second year of implementation (to give time for crimes to be committed, investigated, and charged and defendants to be tried, convicted, and sentenced), approximately 54 offenders each year who were sentenced to the DOC for class 6 felony offenses will now be charged and sentenced for class 1 misdemeanors and will be sentenced to county jails, probation, or a combination of the two instead. Additionally, 36 offenders each year will be sentenced for a class 6 felony rather than a class 4 felony. The average length of stay for a class 4 felony drug offense is 30.6 months and for a class 6 felony drug offense it is 12 months, a difference of 18.6 months. Finally, six offenders each year will receive a class 6 felony sentence for the attempt to commit one of the class 6 felony possession crimes, rather than a class 5 felony sentence for attempting to commit a class 4 felony.

The fiscal note assumes that the savings attributable to the bill will come from private prisons. Offenders placed in a private contract prison cost the state about \$56.73 per offender per day, including the current daily rate of \$52.69 and an estimated \$4.04 per offender per day for medical care provided by the DOC. Table 4 shows the estimated savings over the next five fiscal years.

Fiscal Year	Inmate Bed Impact	Operating Cost
FY 2012-13	0.0	\$0
FY 2013-14	(54.0)	(1,118,148)
FY 2014-15	(92.8)	(1,920,523)
FY 2015-16	(112.6)	(2,330,511)
FY 2016-17	(112.6)	(2,330,511)
Total		(\$7,699,693)

Department of Human Services (DHS). There will be a one-time General Fund expenditure of \$17,500 in FY 2012-13 in the DHS as a result of the provision requiring the development of a training program for trauma-informed substance abuse treatment and best practices. The costs are associated with hiring a consultant to develop curricula at a rate of \$100 per hour for approximately 150 hours and the purchase of research and reference materials at a cost of \$2,500. The fiscal note assumes the curricula can be posted on a DHS website for access by all licensed substance abuse treatment programs, with copies of the purchased research and reference materials being distributed as requested.

Judicial Branch. The Judicial Branch will experience both savings and costs as a result of the bill. In FY 2012-13, the branch will require a General Fund reduction of \$997,818 and 17 FTE. The savings result from approximately 2,800 cases each year that will be filed as misdemeanors in county court rather than felonies in district court. The change will require a total of 17.0 fewer FTE (4.0 judicial officers and 13.0 judicial support staff). *Note that this number will likely change because a certain number of offenders each year will not simply transfer from district court to county court, but will be diverted to drug court. Specific figures were not available at the time the fiscal note was published, but the note will be updated as those become available.*

The costs to the Judicial Branch will be in the area of probation services. The fiscal note assumes that the reduction of crime classifications and penalties for drug possession crimes will result in more offenders being sentenced to probation. Beginning in the second year of implementation (to give time for crimes to be committed, investigated, and charged and defendants to be tried, convicted, and sentenced), the bill is expected to generate 309 new high risk offenders, 6 new intensive probation programming offenders, and 91 offenders moving from intensive probation programming to regular probation each year. The impact of the probation cases is a need for increased probation officers, probation supervision, and probation support services, for a total

of 11.4 FTE. Further, beginning in the third year of implementation, it is expected that an additional 30 offenders each year will be eligible for parole because they will no longer have prior felony convictions that make them ineligible. This increase is expected to require a total of 1.0 new FTE in probation services each year. The net impact to the Judicial Branch is shown in Table 5.

Table 5. Judicial Branch Expenditures Under SB 12-163		
Cost Components	FY 2012-13	FY 2013-14
Trial Court Personal Services	(\$966,668)	(\$1,054,549)
Trial Court FTE	(17)	(17)
Trial Court Operating Expenses	(31,150)	(31,150)
Probation Personal Services	0	678,340
Probation FTE	0	11.4
Probation Operating Expenses	0	10,830
Probation Capital Outlay	0	53,614
TOTAL	(\$997,818)	(\$342,915)

Department of Public Safety (DPS). General Fund expenditures in the DPS are expected to be reduced by \$741,000 per year beginning in FY 2013-14 because of fewer people sentenced to community corrections each year under the bill. As with the impact to the DOC and probation services, the fiscal note assumes that the savings to the DPS will begin in the second year of implementation to give time for crimes to be committed, investigated, and charged and defendants to be tried, convicted, and sentenced. Approximately 60 offenders are sentenced to community corrections each year for the offenses enumerated in the bill. Data from the Division of Criminal Justice in the DPS show that in about 95 percent of those cases (57 offenders), the class 6 felony possession was the highest charge in the case. As such, the fiscal note assumes that 57 fewer offenders will be sentenced to community corrections each year at a savings of \$13,000 per offender, for a total annual savings of \$741,000

Office of the Alternate Defense Counsel (OADC). The OADC is likely to see a reduction in workload as a result of the bill. The office does not track drug cases by the specific charge, so the annual number of cases related to the offenses addressed by the bill is unknown. The expenditure difference between a class 4 felony and a class 6 felony is approximately \$480 per case; the difference between a class 6 felony and class 1 misdemeanor is \$260. As the number of cases handled by the OADC each year is unknown, the fiscal note cannot estimate the savings to the office, but it is expected to be minimal.

Office of the State Public Defender (OSPD). The OSPD will experience a reduction in workload as a result of the bill, however, the reduction is expected to be minimal relative to the overall caseload of the office. In FY 2010-11, the OSPD closed 1,027 cases charged under the offenses addressed by the bill. Of these, 902 were class 6 felonies and the remain 125 were class 4 felonies. Under the weighted caseload model used by the office, class 6 felonies and class 1 misdemeanors require the same amount of time, which indicates that there would be no

change in workload for 902 of the annual cases. The impact of moving 125 cases from the class 4 felony level to the class 6 felony level is a reduction of 345 attorney hours per year. When combined with support staff, the total reduction to the OSPD is 0.2 FTE. An exact savings amount associated with the FTE was not available at the time the fiscal note was published, but was estimated to be approximately \$10,500. This will be updated with more detail in a later version.

Drug Offender Surcharge Fund or Corrections Treatment Fund. The bill requires the savings generated by the bill to be appropriated to the Drug Offender Surcharge Cash Fund or the Corrections Treatment Cash Fund, depending on the passage of Senate Bill 12-104. The fiscal note assumes that whole amount will be spent on costs associated with substance abuse assessment, testing, education, and treatment each year according the current statutory allocation mechanism. In FY 2012-13, that amount is expected to be \$990,818 and in FY 2013-14, it is expected to be \$2,212,563.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 6.

Table 6. Expenditures Not Included Under SB 12-163*		
Cost Components	FY 2012-13	FY 2013-14
Employee Insurance (Health, Life, Dental, and Short-term Disability)	(\$105,587)	(\$35,619)
Supplemental Employee Retirement Payments	(51,307)	(22,801)
TOTAL	(\$156,894)	(\$58,420)

*More information is available at: <http://colorado.gov/fiscalnotes>

Local Government Impact

The bill will increase costs for county sheriffs' offices. Offenders who are currently convicted of class 6 felony drug possession crimes will now be convicted of class 1 misdemeanors. The fiscal note is unable to estimate the number of sentences to county jails that will result from the bill, but it is expected to be near 500 offenders each year. The penalty for a class 1 misdemeanor is 6 to 18 months imprisonment 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 a daily rate of \$50.44 to house state inmates.

State Appropriations

For FY 2012-13, the Department of Human Services will require a General Fund appropriation of \$17,500. The Judicial Branch will require a General Fund reduction of \$997,818 and 17.0 FTE. The Office of the State Public Defender will require a General Fund reduction of \$10,500 and 0.2 FTE. Finally, \$990,818 should be appropriated to the Drug Offender Surcharge Cash Fund or the Corrections Treatment Cash Fund, depending on the passage of Senate Bill 12-104.

Departments Contacted

Corrections
Human Services
Joint Budget Committee
Judicial
Legislative Council
Legislative Legal Services
Public Safety