

*Colorado Legislative Council Staff Fiscal Note*

**STATE and LOCAL  
REVISED FISCAL IMPACT**

(replaces fiscal note dated March 27, 2012)

**Drafting Number:** LLS 12-0784 **Date:** April 26, 2012  
**Prime Sponsor(s):** Sen. Mitchell; Steadman **Bill Status:** Senate Appropriations  
 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.

<b>Fiscal Impact Summary</b>	<b>FY 2012-2013</b>	<b>FY 2013-2014</b>
<b>State Revenue</b> Drug Offender Surcharge Cash Fund or Correctional Treatment Cash Fund (depending on the passage of SB 12-104)	\$22,020	\$29,894
<b>State Transfers or Diversions</b> 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)	868,425	1,285,039
<b>State Expenditures</b> General Fund	(868,425)	(1,285,039)
Cash Funds Drug Offender Surcharge Cash Fund or Correctional Treatment Cash Fund (depending on the passage of SB 12-104)	868,425	1,285,039
<b>FTE Position Change</b>	(4.2) FTE	0.3 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 Corrections requires a General Fund reduction of \$455,542. The Department of Human Services will require a General Fund appropriation of \$17,500. The Judicial Branch will require a General Fund reduction of \$219,932 and 4.0 FTE. The Office of the State Public Defender will require a General Fund reduction of \$10,500 and 0.2 FTE. The Department of Public Safety requires a General Fund reduction of \$200,491. Finally, \$868,425 should be appropriated from 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:

<b>Table 1. Changes in Crime Classification and Penalties for Drug Offenses Under SB 12-163</b>		
<b>Unlawful Possession Offense</b>	<b>Current Classification and Penalty</b>	<b>Proposed Classification and Penalty</b>
200 milligrams or less of flunitrazepam	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  A third or subsequent conviction within the preceding 5 years is a class 6 felony
800 milligrams or less of ketamine		
4 grams or less of any schedule I or II substance		
2 grams or less of methamphetamine or gamma hydroxybutyrate (GHB)		
More than 200 milligrams of flunitrazepam	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
More than 800 milligrams of ketamine		
More than 4 grams of any schedule I or II substance		
More than 2 grams of methamphetamine or GHB		

\* *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 by 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.

<b>Table 2. Change in State Revenue Collections Under SB 12-163</b>							
	<b>Current</b>			<b>Proposed</b>			<b>Estimated Change</b>
	<b>Existing Assessed Totals</b>	<b>First Year Collection Rates</b>	<b>Revenue Estimate</b>	<b>New Assessed Totals</b>	<b>First Year Collection Rates</b>	<b>Revenue Estimate</b>	
<b>Year 1</b>							
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)
<b>Year 1 Total</b>							<b>\$22,020</b>
<b>Year 2</b>							
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)
<b>Year 2 Total</b>							<b>\$29,894</b>
<b>Year 3</b>							
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)
<b>Year 3 Total</b>							<b>\$39,390</b>

**State Transfers or Diversions**

In FY 2012-13, the bill requires the transfer of an estimated \$868,425 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 \$1,285,039.

**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.

<b>Table 3. Summary of Expenditures and Savings Under SB 12-163</b>				
<b>Department</b>	<b>FY 2012-13</b>	<b>FTE</b>	<b>FY 2013-14</b>	<b>FTE</b>
Corrections	(\$455,542)	0.0	(\$911,084)	0
Human Services	17,500	0.0	0	0
Judicial (trial court savings)	(278,693)	(5.0)	(303,295)	(5.0)
Judicial (probation costs)	59,301	1.0	340,822	5.5
Public Defender	(10,500)	(0.2)	(10,500)	(0.2)
Public Safety	(200,491)	0.0	(400,982)	0
<b>Total</b>	<b>(\$868,425)</b>	<b>(4.2)</b>	<b>(\$1,285,039)</b>	<b>0.3</b>

**Department of Corrections (DOC).** General Fund expenditures in the DOC will decrease by \$455,542 in FY 2012-13 and \$911,084 in FY 2013-14, as part of the five-year savings shown in Table 4. 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. Of those, ten offenders each year have two or more convictions for the offenses in the bill. They will likely continue to be sentenced to the DOC. The fiscal note assumes that half of the remaining 44, or 22 offenders, will be tried, convicted and sentenced in the first year of implementation, based on the historical progression and duration of most misdemeanor cases. In the second year of implementation, all 44 will be diverted from the DOC to county jails, probation, or a combination of both.

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.

<b>Table 4. Five-Year Fiscal Impact On DOC Facilities Under SB 12-163</b>		
<b>Fiscal Year</b>	<b>Inmate Bed Impact</b>	<b>Operating Cost</b>
FY 2012-13	(22.0)	(\$455,542)
FY 2013-14	(44.0)	(911,084)
FY 2014-15	(82.8)	(1,713,457)
FY 2015-16	(102.6)	(2,123,446)
FY 2016-17	(102.6)	(2,123,446)
<b>Total</b>		<b>(\$7,326,975)</b>

**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 \$219,932 and 5.0 FTE. The savings result from approximately 2,520 cases each year that will be filed as misdemeanors in county court rather than felonies in district court. Approximately 650 of those cases are currently diverted to drug court each year and that number is not expected to change. An additional 650 cases each year are currently heard in county court as a result of local policies and that number is not expected to change. The net shift of 1,220 cases from district court to county court will require a total of 5.0 fewer FTE (1.0 judicial officers and 4.0 judicial support staff).

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. The fiscal note also assumes that only half of the eventual total annual impact of cases moving from felonies to misdemeanors will be realized in the first year of implementation, based on the historical progression and duration of most misdemeanor cases. The impact of the felony cases will not be shown until 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 120 new high risk offenders, 6 new intensive probation programming offenders, and 91 offenders moving from intensive probation programming to regular probation each year. Further, beginning in the second 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. Finally, the bill requires that any person convicted of a misdemeanor offense in the bill must be supervised by state probation services. This means that 97 offenders who are currently supervised by the Denver Adult Probation Department and in private probation services will be supervised by the state. The impact of the new probation cases is a need for increased probation officers, probation supervision, and probation support services, for a total of 5.5 FTE. The net impact to the Judicial Branch is shown in Table 5.

<b>Table 5. Judicial Branch Expenditures Under SB 12-163</b>		
<b>Cost Components</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>
Trial Court Personal Services	(\$270,643)	(\$295,245)
Trial Court FTE	(5.0)	(5.0)
Trial Court Operating Expenses	(8,050)	(8,050)
Probation Personal Services	53,648	321,488
Probation FTE	1.0	5.5
Probation Operating Expenses	950	5,225
Probation Capital Outlay	4,703	14,109
<b>TOTAL</b>	<b>(\$219,392)</b>	<b>\$37,527</b>

**Department of Public Safety (DPS).** General Fund expenditures in the DPS are expected to be reduced by \$200,491 in FY 2012-13 and \$400,982 each year thereafter because fewer people will be sentenced to community corrections each year under the bill. As with the impact to the DOC and probation services, the fiscal note assumes that half the savings to the DPS will be realized in the first year of implementation, with the full impact showing in the second year. 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. Approximately 10 percent of *those* cases (6) had two or more convictions for drug possession and will still be charged with a class 6 felony. These offenders will remain eligible for community corrections. As such, the fiscal note assumes that 51 fewer offenders will be sentenced to community corrections each year. The average daily rate for community corrections programs is \$43.68 and the average length of stay in a program is 180 days. Therefore, the estimated total annual savings will be \$400,982.

**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 remaining 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.

**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 \$868,425 and in FY 2013-14, it is expected to be \$1,285,039.

**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.

<b>Table 6. Expenditures Not Included Under SB 12-163*</b>		
<b>Cost Components</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	(\$24,539)	(\$3,073)
Supplemental Employee Retirement Payments	(11,380)	(1,848)
<b>TOTAL</b>	<b>(\$35,919)</b>	<b>(\$4,921)</b>

\*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 be convicted of class 1 misdemeanors under the bill. 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 100 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.

**State Appropriations**

For FY 2012-13, the Department of Corrections requires a General Fund reduction of \$455,542. The Department of Human Services will require a General Fund appropriation of \$17,500. The Judicial Branch will require a General Fund reduction of \$219,932 and 4.0 FTE. The Office of the State Public Defender will require a General Fund reduction of \$10,500 and 0.2 FTE. The Department of Public Safety requires a General Fund reduction of \$200,491. Finally, \$868,425 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  
Judicial  
Public Safety

Human Services  
Legislative Council

Joint Budget Committee  
Legislative Legal Services