

Colorado Legislative Council Staff Fiscal Note

**FINAL
FISCAL NOTE**

Drafting Number: LLS 15-0042	Date: October 10, 2015
Prime Sponsor(s): Rep. Saine; McCann Sen. Cooke; Johnston	Bill Status: Signed into Law
	Fiscal Analyst: Kerry White (303-866-3469)

BILL TOPIC: FELONY OFFENSE FOR REPEAT DUI OFFENDERS

Fiscal Impact Summary*	FY 2015-16	FY 2016-17	FY 2017-18
State Revenue		\$100,714	\$211,802
Cash Funds		100,714	211,802
State Expenditures	\$1,472,860	\$4,047,436	\$7,962,650
General Fund	1,272,134	3,800,529	7,715,743
Centrally Appropriated Costs**	200,726	246,907	246,907
FTE Position Change	14.2 FTE	16.9 FTE	16.9 FTE
TABOR Set-Aside		\$100,714	\$211,802

Appropriation Required: See State Appropriations section.

* 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

This bill changes the penalties for certain driving offenses.

Felony driving under the influence (DUI). Under current law, a DUI, *DUI per se*, or DWAI (driving while ability impaired) is an unclassified misdemeanor offense. The bill increases the penalty to a class 4 felony after three or more prior convictions of a DUI, *DUI per se*, or DWAI; vehicular homicide; vehicular assault; or any combination thereof.

For purposes of assessing the number of convictions, the bill clarifies that convictions from other U.S. states and territories are deemed to apply if they would constitute the same offense in Colorado. The court is also required to consider whether all reasonable and appropriate alternative sentences have been exhausted and to determine that incarceration is the most suitable option before imposing a term in the Department of Corrections (DOC).

Aggravated driving with a revoked license. The bill reduces the penalty for this offense from a class 6 felony to a class 1 misdemeanor, but requires a sentencing court to ensure that the offender spends a minimum of 60 days in county jail. The bill also repeals provisions for this offense when it is committed with a DUI, *DUI per se*, or DWAI as part of the same criminal episode.

Restricted driving privileges. If, under current law, a driver has had his or her driving privileges revoked for certain DUI-related offenses, he or she is required to hold an interlock-restricted license for at least a year following reinstatement. This bill extends that requirement to a minimum of two years and a maximum of five years.

Background

Driving while under the influence occurs when a person drives a motor vehicle while under the influence of drugs, alcohol, or both. Driving while ability impaired occurs when a person drives while impaired by drugs, alcohol, or both. DUI *per se* occurs when a person has a BAC of 0.08 or higher at the time of driving, or within two hours of driving.

Historical data and assumptions for felony DUI. In FY 2013-14, there were 24,124 DUI/DWAI cases statewide (including the Denver County Court). Of the cases filed, about 90 percent resulted in a conviction and 25 percent resulted in a jail sentence. Based on information provided by the Colorado District Attorneys' Council (CDAC), the average length of time between DUI offenses ranges from 39 to 44 months.

Sentencing for comparable crimes. For informational purposes, staff analysis of other class 4 felonies that are not crimes against persons, included theft (\$20,000 to \$100,000) and attempted arson. This analysis found that the prison sentencing rate for theft is 31 percent and 63 percent for attempted arson. An analysis by the Judicial Department finds that across all class 4 felonies, 38 percent of offenders receive a term of incarceration in the DOC as part of the sentence.

Assumptions

Revenue and costs in this fiscal note use the following assumptions:

- all DUI cases that meet the criteria of the bill (about 1,749) will transfer from a state county court or the Denver County Court to a district court operated by the state due to the new felony classification;
- 15 percent of cases will be sentenced to prison and will serve an average length of stay of 30.0 months;
- 149 offenders per year convicted of aggravated driving without a driver's license will no longer be incarcerated in the DOC for an average of 19 months (sentencing data comes from the CDAC); and
- the Office of the State Public Defender (OSPD) will represent 70 percent of cases.

State Revenue

Table 1 shows the changes in revenue and is adjusted in the first year to reflect the bill's effective date. Revenue estimates have also been adjusted to account for indigence and payment rates of these offenders, which vary widely. The fiscal note assumes an indigence rate of 25 percent. For each year's assessed fines, 30 percent of the fine is collected in year 1 and 20 percent is collected in each year thereafter, until the fine is paid in full.

Table 1. Revenue Change under HB 15-1043				
Fee	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Increase Victim Assistance Fee - \$85 (from \$78 to \$163) Denver Cases Paying Victim Assistance Fee - \$163 Subtotal	-	\$9,991 5,868 \$15,859	\$17,562 10,330 \$27,892	\$21,560 12,653 \$34,213
Increase Docket Fee - \$14 (from \$21 to \$35) Denver Cases Paying Docket Fee - \$35 Subtotal	-	\$1,645 1,260 \$2,905	\$2,892 2,218 \$5,110	\$3,551 2,717 \$6,268
Probation Supervision Fee	-	\$81,950	\$178,800	\$186,250
Criminal fine penalty (class 4 felony)	-	potential increase	potential increase	potential increase
Total	-	\$100,714	\$211,802	\$226,731

Fine and fee revenue increases. By increasing the penalty for certain DUI-related offenses from an unclassified misdemeanor to felonies, cash fund fine revenue will increase. Under current law, persons convicted of three or more DUI-related offenses may receive a fine penalty of \$600 to \$1,500. The fine penalty for a class 4 felony is \$2,000 to \$500,000. Because the court has the discretion to impose a fine, and the amount of such fines varies by offender, the exact increase in fine revenue cannot be determined.

Revenue credited to the Victim Assistance Fund will increase. Currently, misdemeanants pay a fee of \$78. Under the bill, the fee will increase by \$85 to a total of \$163, which is the amount levied against persons who commit felonies. A total of 1,749 offenders in state courts will pay the increased fee amount. Additionally, as a result of transferring to district court, 175 offenders who are currently convicted in the City and County of Denver will pay the entire \$163 fee to the state.

Revenue from docket fees will also increase and be credited to the Judicial Stabilization Cash Fund. In county courts, this fee will increase by \$14 from \$21 versus the \$35 fee charged in district courts. Table 1 assumes that 1,749 offenders in state courts will pay an increased fee of \$14, and that 175 offenders who are currently convicted in the City and County of Denver will pay the full \$35 to state courts.

Persons who commit felonies must be sentenced in district court, rather than in county court; therefore, offenders serving probation at the county level will now be sentenced to probation under the Judicial Department. Under the bill, offenders annually who are convicted of DUI, DWAI, or DUI *per se* in the Denver County Court and sentenced to probation will now be served by the state. Offenders serving a probation sentence pay a \$50 per month probation supervision fee. This fee will now be paid to the state, rather than to the City and County of Denver. Assuming each offender serves two years of probation, probation supervision fee revenue will increase. The fiscal note assumes 85 percent of those transferring from Denver County Court, or 149 people, will be sentenced to probation.

Fine and fee revenue decreases. For each of the 149 offenders convicted each year of aggravated driving with a revoked license, the victim assistance fee is reduced by \$85 and the docket fee is reduced by \$14. In addition, it is possible that fine revenue may decrease.

TABOR Impact

This bill increases state revenue from fees and fines, which will increase the amount of revenue required to be refunded under TABOR. TABOR refunds are paid from the General Fund.

State Expenditures

Overall, this bill will increase state expenditures by \$1.5 million and 14.2 FTE in FY 2015-16, by \$4.0 million and 16.9 FTE in FY 2016-17, and by \$8.0 million and 16.9 FTE in FY 2017-18. All costs in the first year have been prorated to reflect the bill's effective date and the General Fund paydate shift. Costs are shown in Table 2 and discussed below.

Table 2. Expenditures under HB 15-1043			
Cost Components	FY 2015-16	FY 2016-17	FY 2017-18
JUDICIAL DEPARTMENT	<u>\$1,237,873</u>	<u>\$1,205,667</u>	<u>\$1,205,667</u>
Personal Services	\$831,660	\$989,511	\$989,511
FTE	11.1 FTE	13.2 FTE	13.2 FTE
Operating Expenses and Capital Outlay Costs	252,121	24,890	24,890
Centrally Appropriated Costs	154,092	191,266	191,266
OFFICE OF THE STATE PUBLIC DEFENDER	<u>\$234,986</u>	<u>\$259,825</u>	<u>\$259,825</u>
Personal Services	167,569	200,669	200,669
FTE	3.1 FTE	3.7 FTE	3.7 FTE
Operating Expenses and Capital Outlay Costs	20,346	3,515	3,515
Attorney Registration	437	0	0
Centrally Appropriated Costs*	46,634	55,641	55,641
DEPARTMENT OF CORRECTIONS (Table 3)	\$0	\$2,581,944	\$6,497,158
TOTAL	\$1,472,860	\$4,047,436	\$7,962,650
TOTAL FTE	14.2 FTE	16.9 FTE	16.9 FTE

* Centrally appropriated costs are not included in the bill's appropriation.

Judicial Department — Trial courts. The bill changes the crime classification for certain DUI-related offenses from misdemeanors to felonies and results in about 1,749 felony cases that must be heard at the district court level. Felony cases require more complex case processing than misdemeanor cases, and an increase in jury trials and hearings can also be expected as defendants are now facing the possibility of being sentenced to the DOC. Additionally, the bill impacts the amount of time that a court must spend at a sentencing hearing to review information related to a defendant's prior treatment history, treatment options, and risk level and to determine if incarceration is the most suitable option given the facts and circumstances of each case. Beginning in FY 2015-16, the Judicial Department will be required to add new staff at the district court level to accommodate the increased workload described above. For each of the 2.6 FTE new magistrates, a corresponding 1.0 FTE division clerk, 1.0 FTE court reporter, and 1.0 FTE law clerk is required.

Judicial Department — Probation Division — Offender supervision. Probation staff will be required to accommodate approximately 149 offenders that will be served by the Judicial Department instead of the City and County of Denver. It is assumed that offenders will serve two years on probation. This change requires 0.4 FTE probation supervisor, 2.0 FTE probation officers, and 0.4 FTE support services.

Office of the State Public Defender. The OSPD will experience increased workload under the bill to provide representation to approximately 70 percent of felony cases. The fiscal note assumes that 1.0 FTE attorney at the current misdemeanor level can process 248 cases per year, but only 170 cases at the felony level. Investigator, administrative staff, standard capital outlay, ongoing standard operating and leased space costs are also provided.

Office of the Alternate Defense Counsel. The ADC represents clients that are indigent when the OSPD has a conflict in representing the client, and therefore may incur costs under the bill. These costs have not been estimated, but are anticipated to be minimal.

Five-Year Fiscal Impact on Correctional Facilities

Current law prohibits the General Assembly from passing any bill to increase periods of imprisonment in state correctional facilities without appropriating an amount sufficient to cover the increased capital construction and operating costs of the bill in each of the first five fiscal years. However, current law also allows the DOC to place offenders classified as medium custody and below in private contract prisons, for which no state capital construction costs are incurred.

Offenders sentenced under this bill to the DOC may be placed in either a state-run or a private contract prison, depending on several factors. Any offenders that *must* be housed in a state-run prison will likely require a shift of other inmates in that facility to private contract prisons. Therefore, this fiscal note assumes that the impact of this bill will be accommodated through the use of private contract prisons, and that no new capital construction funds are necessary.

Offenders placed in a private contract prison cost the state about \$60.46 per offender per day, including the current daily rate of \$55.08 and an estimated \$5.38 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. Costs are shown in Table 3.

Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2015-16	0.0	\$0	\$0	\$0
FY 2016-17	117.0	\$0	\$2,581,944	\$2,581,944
FY 2017-18	294.4	\$0	\$6,497,158	\$6,497,158
FY 2018-19	425.9	\$0	\$9,397,689	\$9,397,689
FY 2019-20	425.9	\$0	\$9,397,689	\$9,397,689
Total			\$27,874,479	\$27,874,479

Centrally appropriated costs. 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 estimated in the fiscal note for informational purposes and summarized in Table 4.

Cost Components	FY 2015-16	FY 2016-17	FY 2017-18
Employee Insurance	\$114,535	\$136,317	\$136,317
Supplemental Employee Retirement Payments	77,449	101,848	101,848
Leased Space	8,742	8,742	8,742
TOTAL	\$200,726	\$246,907	\$246,907

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

Local Government Impact

This bill affects local governments in several ways. First, it transfers some DUI cases from the separately administered and funded Denver County Court to the state managed Denver District Court. This will reduce revenue and costs for the Denver County Court in these cases. By increasing the penalty for these cases from a misdemeanor to a felony, workload and costs for district attorneys will increase. These amounts have not been estimated as of this writing.

Second, the bill transfers some cases of aggravated driving with a revoked license from Denver district court to Denver County Court. This will increase revenue and costs for the Denver County Court in these cases.

Third, by decreasing the penalty for cases of aggravated driving with a revoked license from a class 6 felony to a class 1 misdemeanor, workload and costs will also decrease for district attorneys. This bill requires that these cases receive a minimum sentence of 60 days in a county jail. Based on 2014 data from the DOC, the fiscal note assumes that approximately 149 persons per year will be sentenced to jail for a minimum of 60 days each year under this bill. For informational purposes, the cost to house an offender in county jails varies from about \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$52.74 to house state inmates.

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. Please refer to the Background section above for information about the prevalence of existing offenses. For 2014 DUI cases, 73 percent of offenders were male and 27 percent were female. The racial makeup of these offenders was: 83 percent White, 8 percent Hispanic, 6 percent Black, 1 percent Asian, 1 percent Indian, and 1 percent Other.

Effective Date

The bill was signed into law by the Governor on June 1, 2015, took effect and applies to offenses committed on or after August 5, 2015.

State Appropriations

For FY 2015-16, the bill requires and includes the following new appropriations:

- \$1,083,781 General Fund to the Judicial Department and an allocation of 11.1 FTE;
- \$188,352 General Fund to the Office of the State Public Defender and an allocation of 3.1 FTE; and
- a five-year General Fund appropriation of \$27,874,479 to the Department of Corrections as shown in Table 3, above.

State and Local Government Contacts

Corrections
Human Services
Municipalities
Sheriffs

Counties
Judicial
Public Safety

District Attorneys
Law
Revenue