

Colorado Legislative Council Staff Fiscal Note
**STATE and LOCAL
 FISCAL IMPACT**

Drafting Number: LLS 10-0360
Prime Sponsor(s): Rep. Levy
 Sen. Morse

Date: March 9, 2010
Bill Status: House Judiciary
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TITLE: CONCERNING MISDEMEANOR PENALTIES FOR PERSONS WHO ARE CONVICTED OF MULTIPLE TRAFFIC OFFENSES INVOLVING ALCOHOL OR DRUGS.

Fiscal Impact Summary	FY 2010-2011	FY 2011-2012
State Revenue		
Cash Funds		
Persistent Drunk Driver Cash Fund	\$124,875	\$282,094
Court-ordered Alcohol Treatment Cash Fund	\$124,875	\$282,094
State Expenditures		
General Fund	\$438,518	\$434,018
FTE Position Change	7.3 FTE	7.3 FTE
Effective Date: July 1, 2010, and applies to offenses committed on or after that date.		
Appropriation Summary for FY 2010-2011: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

Current law provides one set of penalties for a first offense of driving under the influence (DUI), DUI per se, driving while ability impaired (DWAI), and driving as a habitual user of a controlled substance. A second, more restrictive set of penalties exists for any subsequent convictions of those offenses. This bill adjusts the penalties for a second offense and creates a new set of penalties for a third or subsequent offense. Table 1 explains the proposed penalties.

# of Convictions	Min. Jail Term	Max. Jail Term	Min. Fine	Max. Fine	Min. Community Service	Max. Community Service	Probation Period
Second	10 days	1 year	\$600	\$1,500	48 hours	120 hours	at least 2 years
Third or subsequent	60 days	1 year	\$600	\$1,500	48 hours	120 hours	at least 2 years

During the mandatory period of imprisonment, an individual may only participate in certain county jail sentencing alternatives (i.e., work, educational, and medical release; home detention; and day reporting) if such programs are available through the county where the individual is incarcerated and if it is for the purpose of:

- continuing a position of employment held at the time of sentencing;
- continuing attendance at an educational institution at which the individual was enrolled at the time of sentencing; or
- participation in a court-ordered alcohol or substance abuse education or treatment program.

A subsequent offense that occurs less than five years after a prior conviction is not eligible for alternative sentencing options such as a deferred prosecution, a deferred sentence, home detention, day reporting, etc. Repeat offenders are also not eligible for earned time, good time, or trusty prisoner status while serving their mandatory jail sentences.

In addition to the mandatory jail sentence, fine, and community service, all repeat offenders must complete a period of probation of at least two years. As a condition of probation the court:

- is required to impose a one-year suspended jail sentence, all or part of which may be imposed if the offender violates a condition of probation;
- is required to include a mandate that the offender complete an alcohol or substance abuse treatment program at the offender's expense;
- is required to order the offender to make restitution;
- may impose additional probation, not to exceed two years, to monitor the offender or ensure that he or she continues to receive treatment;
- may require the offender to begin a treatment program while in jail;
- may require the offender to appear in court at any time during the probation period; and
- may require the offender to use an ignition interlock device during the period of probation at the offender's own expense.

The existing minimum persistent drunk driver surcharge is raised from \$50 to \$100. Half of the collected surcharges will be deposited into the existing Persistent Drunk Driver Fund and the other half into the newly-created Court-ordered Alcohol Treatment Fund.

State Revenue

Raising the minimum persistent drunk driver surcharge is expected increase state revenue. The fiscal note assumes that the surcharge will be imposed on 25,500 cases each year, with 60 percent of those offense occurring on or after the effective date. In a portion of the total number of cases, judges will likely impose a surcharge of \$100 or more, regardless of the statutory minimum. The Judicial Branch has historically been able to collect approximately 37 percent of the fines and surcharges imposed in any given year. Half of persistent drunk driver surcharges collected after the effective date of the bill will be deposited into the Persistent Drunk Driver Fund and the other half will be deposited into the Court-ordered Alcohol Treatment Fund. Table 2 explains the additional revenue generated by the bill.

Table 2. Persistent Drunk Driver Surcharge Revenue Under HB 10-1347						
Year 1						
# of cases on which surcharge is imposed	# of cases on which judges are likely to impose \$100 or more	% of offenses that will occur on or after the effective date	# of cases that will be subject to the new minimum of \$100	Year 1 total amount of new assessments	% collected during the same year	Estimated new revenue
25,500	3,000	60%	13,500	\$675,000	37%	\$249,750
Total Year 1 Additional Revenue						\$249,750
Year 2						
# of cases on which surcharge is imposed	# of cases on which judges are likely to impose \$100 or more	% of offenses that will occur on or after the effective date	# of cases that will be subject to the new minimum of \$100	Year 2 total amount of new assessments	% collected during the same year	Estimated new revenue
\$25,500	3,000	95%	21,375	\$1,068,750	37%	\$395,438
					Additional % collected during year 2 on year 1 assessments	Additional new revenue during year 2 from year 1 assessments
					25%	\$168,750
Total Year 2 Additional Revenue						\$564,188

State Expenditures

Judicial Branch. The branch will require \$438,518 and 7.3 FTE from the General Fund in FY 2010-11 and \$434,018 and 7.3 FTE in FY 2011-12. While the bill may affect the trial courts in a number of ways, the anticipated workload increase will be absorbed within existing resources. However, repeat offenders who, under current law, receive a jail sentence with no probation will now be placed on probation for two years following the completion of the jail term. These represent about 1,530 new probation cases in total. Of these, 1,346 (88%) individuals are expected to be minimum risk cases, with the remainder classified as medium risk. Table 3 details the costs to the department for new probation officers and associated staff.

Table 3. Expenditures Under HB 10-1347		
Cost Components	FY 2010-11	FY 2011-12
Personal Services	\$391,492	\$427,083
FTE	7.3	7.3
Operating Expenses and Capital Outlay	\$41,026	\$6,935
Safety Equipment	\$6,000	\$0
TOTAL	\$438,518	\$434,018

The bill generates new revenue, half of which will be deposited into the Court-ordered Alcohol Treatment Fund. The moneys in the fund are subject to annual appropriation to judicial districts to assist in providing:

- court-ordered alcohol treatment programs for indigent offenders;
- approved ignition interlock devices for indigent offenders; and
- court-ordered alcohol treatment programs for incarcerated offenders.

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 4.

Table 4. Expenditures Not Included Under HB 10-1347*		
Cost Components	FY 2010-11	FY 2011-12
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$51,830	\$51,830
Supplemental Employee Retirement Payments	14,558	19,326
TOTAL	\$66,388	\$71,156

**More information is available at: <http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536133924>*

Local Government Impact

The exact impact to the county jails cannot be determined, but it is expected to be minimal as the bill lowers the minimum sentence for some repeat offenses and raises it for others. 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 2010-11, the Judicial Branch will require a General Fund appropriation of \$438,518 and 7.3 FTE.

Departments Contacted

Human Services
Revenue

Judicial
Colorado Counties, Inc.