

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

Drafting Number: LLS 10-0902	Date: March 18, 2010
Prime Sponsor(s): Rep. Waller Sen. Steadman; Mitchell	Bill Status: House Judiciary Fiscal Analyst: Jessika Shipley (303-866-3528)

TITLE: CONCERNING CHANGES TO CRIMES INVOLVING CONTROLLED SUBSTANCES.

Fiscal Impact Summary	FY 2010-2011	FY 2011-2012
State Revenue		
Cash Fund		
Drug Offender Surcharge Fund	(\$72,000)	(\$300,000)
State Expenditures		
General Fund	(\$1,523,010)	(\$6,346,807)
FTE Position Change	(0.3 FTE)	(0.3 FTE)
Effective Date: August 11, 2010, assuming the General Assembly adjourns May 12, 2010, as scheduled and no referendum petition is filed. The bill applies to offenses committed on or after the effective date.		
Appropriation Summary for FY 2010-2011: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

This bill makes a number of changes to offenses related to controlled substances. In particular, it:

- lowers the penalty for the unlawful use of a controlled substance from various levels, depending on the circumstances, to a class 2 misdemeanor, regardless of the circumstances;
- separates the crime of possession of a controlled substance (other than marijuana) from the crime of manufacturing, dispensing, selling, distributing, or possessing with intent to manufacture, dispense, sell, or distribute;
- creates the new crime of sale of a controlled substance to a minor, which is a class 3 felony and carries a mandatory prison sentence;
- lowers the penalties for the crimes of unlawful possession of a controlled substance and manufacturing, dispensing, selling, distributing, or possessing with intent to manufacture, dispense, sell, or distribute;
- substantially changes offenses related to marijuana with regard to the amount required to constitute a crime and lowers associated penalties;

- requires the court, in a case where an individual who is 18 or older is convicted of transferring or dispensing any amount of marijuana to a person under the age of 15, to sentence the defendant to a mandatory period of incarceration;
- increases the amount of a schedule I or II controlled substance necessary for a defendant, who is convicted of unlawfully introducing, distributing, or importing such a substance into Colorado, to be designated as a special offender for sentencing purposes;
- clarifies the conditions under which possession of a firearm in the commission of a drug offense designates a defendant as a special offender;
- lowers the penalty for fraud and deceit related to a controlled substance to a class 6 felony;
- directs the General Assembly to use a portion of the savings generated by the bill to fund costs associated with community-based substance abuse treatment;
- requires the Division of Criminal Justice (DCJ) in the Department of Public Safety to annually analyze the amount of fiscal savings the bill generates over the previous fiscal year and report such analysis to the Joint Budget Committee; and
- makes conforming amendments.

State Revenue

Current law levies a surcharge on individuals convicted of drug-related offenses. Those surcharges are deposited into the Drug Offender Surcharge Fund. An estimated \$240,000 is expected to be deposited in the fund during FY 2010-11 from new offenses committed during that same fiscal year. (The majority of money coming into the fund is from older offenses in which payments are continuing.) As a result of the reclassification of offenses in the bill, the average surcharge imposed on new offenses will decrease by about \$72,000 (30%) in FY 2010-11.

Under current law, an estimated \$1,000,000 will be collected during FY 2011-12 from offenses committed in FY 2010-11 and FY 2011-12. Since the average surcharge imposed would decrease about 30% as a result of the bill, the revenue during FY 2011-12 could be reduced by as much as \$300,000.

State Expenditures

The bill will result in a General Fund savings of \$1,523,010 and 0.3 FTE in FY 2010-11 and \$6,346,807 and 0.3 FTE in FY 2011-12. The costs and savings in the various departments are discussed in the following sections.

***Department of Public Safety (DPS).* The department will require \$36,528 and 0.5 FTE in FY 2010-11 and \$39,842 and 0.5 FTE in FY 2011-12.** The DCJ is required to analyze and report each year to the Joint Budget Committee concerning the amount of fiscal savings generated by the bill. The department requires 0.5 FTE and other costs as outlined in Table 1 to accomplish this task.

Table 1. Expenditures in the DPS Under HB 10-1352		
Cost Components	FY 2010-11	FY 2011-12
Personal Services	\$28,246	\$33,895
FTE	0.5	0.5
Operating Expenses and Capital Outlay	\$4,010	\$1,675
Travel	\$1,842	\$1,842
Report Printing, Production, and Meeting Costs	\$2,430	\$2,430
TOTAL	\$36,528	\$39,842

Judicial Branch. The branch will require expenditures of **\$263,377 and 4.8 FTE in FY 2010-11 and \$283,563 and 4.8 FTE in FY 2011-12.** More offenders convicted of drug offenses will become eligible for sentences to probation through the lowering of weight limits for possession and the reduction in penalties for a large number of drug-related crimes. The fiscal note assumes that an additional 195 offenders each year will require probation services. Of those, 117 will be classified as high risk and the remaining 78 will be classified as medium risk. The branch requires new probation officers, supervisors, and support staff to meet the needs of the new offenders. The costs associated with the probation needs are shown in Table 2.

Table 2. Expenditures in the Judicial Branch Under HB10-1352		
Cost Components	FY 2010-11	FY 2011-12
Personal Services	\$232,501	\$279,003
FTE	4.8	4.8
Operating Expenses and Capital Outlay	\$26,976	\$4,560
Safety Equipment	\$3,900	\$0
TOTAL	\$263,377	\$283,563

Office of the State Public Defender (OSPD). The OSPD will see decreased costs of **\$244,512 and 5.6 FTE in FY 2010-11 and \$264,453 and 5.6 FTE each year thereafter.** Lowering the penalties for a large number of drug-related crimes is expected to reduce the workload requirements for the OSPD by approximately 11,700 hours each year because felony cases take more time to defend. Additionally, the bill raises the amount of a controlled substance required for an individual to be charged with a drug-related offense. This will lower the number of individuals charged with drug crimes. The cost savings associated with the reduced workload are shown in Table 3.

Table 3. Cost Savings in the OSPD Under HB10-1352		
Cost Components	FY 2010-11	FY 2011-12
Personal Services	(\$239,192)	(\$259,133)
FTE	(5.6)	(5.6)
Operating Expenses	(\$5,320)	(\$5,320)
TOTAL	(\$244,512)	(\$264,453)

Department of Corrections (DOC). The DOC will realize a savings of **\$1,578,403 in FY 2010-11 and \$6,405,759 in FY 2011-12.** Due to the reduction in penalties for the various offenses included in the bill, fewer inmates will be sentenced to the DOC and those who are sentenced will have a shorter length of stay. As such, the department's operating costs will be reduced according to a prorated formula that reflects the percentage of total offenders housed in state facilities and in private prisons. Table 4 provides a comparison of the impact the covered offenses currently have on correctional facilities in the state and the impact of the proposed changes.

Five-Year Fiscal Impact on Correctional Facilities

Sections 17-1-102, 104.9., and 105.5, C.R.S., authorize the department to permanently place inmates classified as medium custody and below in private contract prisons. Inmates classified higher than medium custody cannot be placed in private contract prisons, except under "correctional emergency" conditions. *The fiscal note assumes that the new inmates identified in this bill will be allocated between state correctional facilities and private contract prisons according to historical patterns.*

Operating costs for state correctional facilities are \$88.60 per bed per day or \$32,339 per bed per year. The state pays a rate of \$61.19 per bed per day for inmates placed in private prisons. The total cost to the department is therefore \$22,334 per private prison bed per year. The bill applies to class 3 through class 6 felonies. Departmental data indicates that:

- 27 percent of class 3 felonies;
- 29 percent of class 4 felonies;
- 32 percent of class 5 felonies; and
- 33 percent of class 6 felonies

are housed in private prisons, and the operating costs presented in Table 4 have been prorated accordingly.

It is important to note that the bed impact number increases each year because the average length of stay for every felony class is more than 12 months. As such, regardless of the felony class of the offense, some or all of the savings from any given year carry over into the following year.

Fiscal notes usually do not include operating expenses in the first year a bill becomes effective in order to reflect the time it takes for an offender to commit a crime, get arrested and charged, complete a trial and sentencing, and arrive at the DOC. However, in the case of this bill, approximately 217 offenders each year that are currently convicted of felony crimes will no longer be sentenced to the DOC because those offenses are being reduced to misdemeanors. Misdemeanor trials generally take much less time than felony trials. As such, the fiscal note assumes that 108.6 (50%) of those offenders will be tried and sentenced in FY 2010-11.

Fiscal Year	Bed Impact	Operating Expenses
FY 2010-11	-108.6	(\$1,578,403)
FY 2011-12	-217.1	(\$6,405,759)
FY 2012-13	-477.8	(\$14,075,758)
FY 2013-14	-580.2	(\$17,094,299)
FY 2014-15	-588.9	(\$17,350,627)
Total		(\$56,504,846)

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 5.

Cost Components	FY 2010-11	FY 2011-12
Employee Insurance (Health, Life, Dental, and Short-term Disability)	(\$2,130)	(\$2,130)
Supplemental Employee Retirement Payments	801	2,433
TOTAL	(\$1,329)	\$303

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

Local Government Impact

Approximately 217 felony convictions each year will be reduced to misdemeanor offenses. This will impact county jails. The penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in jail, a fine of \$500 to \$5,000, or both. For a class 2 misdemeanor, it is 3 to 12 months in jail, a fine of \$250 to \$1,000, 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 2010-11, the DOC will require a negative General Fund appropriation of \$1,578,403, plus the other five-year savings detailed in Table 3. The departments listed below will also require the following General Fund appropriations:

Department	Amount	FTE
Public Safety	\$36,528	0.5
Office of the State Public Defender	(\$244,512)	-5.6
Judicial	\$263,377	4.8

Departments Contacted

Corrections Human Services Judicial Public Safety