

*Colorado Legislative Council Staff Fiscal Note*

**FINAL  
FISCAL NOTE**

**Drafting Number:** LLS 13-0123  
**Prime Sponsor(s):** Rep. Waller  
 Sen. Morse

**Date:** May 16, 2013  
**Bill Status:** Postponed Indefinitely  
**Fiscal Analyst:** Kerry White (303-866-3469)

**TITLE:** CONCERNING THE CLASSIFICATION OF CERTAIN DRUNK DRIVING OFFENSES AS FELONIES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

<b>Fiscal Impact Summary</b>	<b>FY 2013-2014</b>	<b>FY 2014-2015</b>	<b>FY 2015-2016</b>
<b>State Revenue</b>			
Cash Funds	<u>up to \$489,828</u>	<u>up to \$668,028</u>	<u>up to \$668,028</u>
Victim Assistance Fund	\$260,388	\$260,388	\$260,388
Offender Services Fund	178,200	356,400	356,400
Judicial Stabilization Fund	51,240	51,240	51,240
Fines Collection Cash Fund	increase.	increase.	increase.
<b>State Expenditures</b>			
General Fund	\$1,741,167	\$15,770,594	\$15,821,598
Cash Funds			
Drivers License Revocation Account	5,180		
<b>FTE Position Change</b>	20.4 FTE	24.4 FTE	25.2 FTE
<b>Effective Date:</b> The bill was postponed indefinitely by the Senate Finance Committee on May 7, 2013.			
<b>Appropriation Summary for FY 2013-2014:</b> See State Appropriations section.			
<b>Local Government Impact:</b> See Local Government Impact section.			

**Summary of Legislation**

This bill increases the penalty for repeated driving while intoxicated-related (DUI) offenses, which include DUI, driving while ability impaired (DWAI), DUI *per se*, vehicular homicide, or vehicular assault. This bill increases the penalty from an unclassified misdemeanor to a class 5 felony if the violation occurred not more than seven years after the first of two prior convictions or the violation occurred after three prior convictions.

Whether a person is sentenced to prison or a term of probation, he or she will be required to participate in a level II substance abuse driving safety program, submit to continuous alcohol monitoring, use an approved interlock device for at least two years, and perform between 48 hours and 120 hours of community service. If a person is sentenced to the Department of Corrections (DOC), he or she must be sentenced to at least the minimum of the presumptive range and complete

the new requirements prior to completing parole. If a person is sentenced to probation, he or she must receive a one year suspended sentence to the DOC, a term in jail of between 90 days and one year, and be supervised for a minimum of two years. The court may not waive the minimum 90 day sentence to a county jail for probationers or the minimum of 48 hours of community service for any offender. Finally, the bill repeals provisions related to the crime of aggravated driving with a revoked license. Currently, this crime requires a separate charge and sentence from the original crime, although penalties are generally served concurrently.

**Background**

The two primary drunk driving offenses in Colorado are driving while ability impaired by alcohol or drugs (DWAI) and driving under the influence of alcohol or drugs (DUI). A person with a blood or breath alcohol content (BAC) of 0.08 or more at the time of driving or within two hours of driving may be charged with a DUI *per se*. These offenses are charged as an unclassified misdemeanor. A habitual user of controlled substances who operates a motor vehicle commits an unclassified misdemeanor. In addition, a driver under the age of 21 with a BAC between 0.02 and 0.05 within two hours of driving (known as underage drinking and driving or UDD) may be charged with a class A traffic infraction. Currently, only the following DUI-related offenses are felonies:

- aggravated driving with a revoked license while under the influence is a class 6 felony;
- vehicular assault committed while under the influence that is the proximate cause of serious bodily injury to another is a class 4 felony; and
- vehicular homicide committed while under the influence is a class 3 felony.

**State Revenue**

Overall, this bill will increase state cash fund revenue in the Judicial Department by up to \$489,828 in FY 2013-14 and \$668,028 per year thereafter. Table 1 shows the changes in revenue.

<b>Table 1. Revenue Changes Under HB13-1214</b>			
<b>Fees</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
Increase Victim Assistance Fee - \$78 to \$163	\$195,840	\$195,840	\$195,840
Victim Assistance Revenue - Denver cases	64,548	64,548	64,548
Increase Docket Fees - \$21 to \$35	35,840	35,840	35,840
Docket Revenue - Denver cases	15,400	15,400	15,400
Parole supervision fee - Denver cases	178,200	356,400	356,400
Criminal fine penalties (class 5 felony)	increase	increase	increase
<b>TOTAL</b>	<b>up to \$489,828</b>	<b>up to \$668,028</b>	<b>up to \$668,028</b>

It should be noted that Table 1, above, presents the maximum change in revenue. The figures do not include any reductions because the indigency and payment rates of these offenders vary widely. However, typical indigency rates vary between 15 percent and 35 percent and payment rates generally range between 20 percent and 30 percent per year.

**Revenue increases.** By increasing the penalty for certain DUI-related offenses from an unclassified misdemeanor to a class 5 felony, fine revenue is expected to increase. Under current law, persons convicted of three or more DUI-offenses may receive a fine penalty of \$600 to \$1,500. The fine penalty for a class 5 felony is \$1,000 to \$100,000. Because the court has the discretion to impose a fine and the amount of any such fines varies by offender, the exact increase in fine revenue cannot be determined. Fines are credited to the Fines Collection Cash Fund.

Revenue credited to the Victim Assistance Fund will increase by \$260,388 per year. Currently, misdemeanants pay a fee of \$78. This fine will increase to \$163, which is the amount levied against offenders who commit felonies. A total of 2,304 offenders in state courts will pay the increased fees. In addition, 396 offenders who are currently convicted in the City and County of Denver will pay the state the entire \$163 fee. Revenue from docket fees will also increase by \$51,240 per year, credited to the Judicial Stabilization Cash Fund. In county courts, this fee is \$21 versus the \$35 fee charged in district courts. This analysis assumes 2,560 offenders in state courts will pay an increased fee of \$14 and that 440 offenders who are currently convicted in the City and County of Denver will pay the full \$35 fee to state courts.

Because the bill requires all offenders to be sentenced in district court instead of county court, it will decrease the number of offenders sentenced to probation at the local level and increase the number of offenders sentenced to probation under the Judicial Branch. Currently, about 75 percent of offenders sentenced in the City and County of Denver are sentenced to probation (297 offenders) each year. These offenders currently pay a probation supervision fee of \$50 per month, which will now be paid to the state instead of the City and County of Denver. As of this writing, the exact length of stay on probation was not available. Assuming each offender serves a full two years of probation, revenue is increased by \$178,200 in the first year and \$356,400 each year thereafter.

## **State Expenditures**

**This bill increases state expenditures by \$1,746,347 and 20.4 FTE in FY 2013-14, \$15,770,594 and 24.4 FTE in FY 2014-15, and \$15,821,598 and 25.2 FTE in FY 2015-16.** Costs for the Judicial Branch, Department of Revenue, and Office of the State Public Defender are described in Table 2 and the discussion that follows. Costs for the DOC are shown in Table 3. All costs are based on the following assumptions:

- a total of 3,000 cases will be required to be heard in state-operated district court (2,560 will transfer from a state operated county court and 440 will transfer from the City and County of Denver);
- consistent with current rates, the conviction rate is assumed to be 90 percent, or 2,700 offenders; and

- 2,700 offenders will be convicted of a class 5 felony rather than an unclassified misdemeanor and 25 percent, or 675 offenders, will be sentenced to the DOC for a term of one year (the minimum of the presumptive range for a class 5 felony).

<b>Table 2. Expenditures Under HB13-1214</b>					
<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
<b>Judicial Branch</b>					
Personal Services	\$1,342,677	\$1,611,212	\$1,611,212	\$1,611,212	\$1,611,212
FTE	19.7	23.6	23.6	23.6	23.6
Operating Expenses	48,579	52,995	52,995	52,995	52,995
Capital Outlay	300,218	0	0	0	0
<b>Subtotal</b>	<b>\$1,691,474</b>	<b>\$1,664,207</b>	<b>\$1,664,207</b>	<b>\$1,664,207</b>	<b>\$1,664,207</b>
<b>Department of Revenue</b>					
Personal Services	\$0	\$0	\$46,482	\$50,708	\$50,708
FTE	0	0	0.8	0.8	0.8
Operating Expenses	0	0	760	760	760
Capital Outlay	0	0	3,762	0	0
Computer Programming	5,180	0	0	0	0
<b>Subtotal</b>	<b>\$5,180</b>	<b>\$0</b>	<b>\$51,004</b>	<b>\$51,468</b>	<b>\$51,468</b>
<b>State Public Defender</b>					
Personal Services	\$44,387	\$53,264	\$53,264	\$53,264	\$53,264
FTE	0.7	0.8	0.8	0.8	0.8
Operating Expenses	697	760	760	760	760
Capital Outlay	3,762	0	0	0	0
Travel	667	667	667	667	667
Attorney Registration	180	180	180	180	180
<b>Subtotal</b>	<b>\$49,693</b>	<b>\$54,871</b>	<b>\$54,871</b>	<b>\$54,871</b>	<b>\$54,871</b>
<b>Department of Corrections</b>					
See Table 3	\$0	\$14,051,516	\$14,051,516	\$14,051,516	\$14,051,516
<b>BILL TOTAL</b>	<b>\$1,746,347</b>	<b>\$15,770,594</b>	<b>\$15,821,598</b>	<b>\$15,822,062</b>	<b>\$15,822,062</b>

***Judicial Branch.*** The Judicial Branch will be required to add new staff at the district court level to accommodate the increased workload. This includes 4.5 FTE magistrates, 4.5 FTE division clerks, 4.5 FTE law clerks, and 4.5 FTE court reporters. Total salary costs are \$1,278,019 per year, prorated in the first year to account for the effective date of the bill and the General Fund payday shift. Capital costs are \$271,121 in the first year to provide new court space and equip other staff members. Per magistrate, \$30,000 is provided for the courtroom, \$9,410 for furniture, \$2,000 for library costs, \$1,400 for conference room costs, and \$3,330 for computer costs. Other staff are provided with standard computer (\$1,230) and furniture costs (\$3,473). Operating costs for magistrates are \$5,700 per year and \$950 per year for other staff, also prorated in the first year.

Probation staff will also be required to accommodate the approximate 300 offenders that will be served by the Judicial Branch instead of the City and County of Denver. This includes 4.0 FTE probation officers, 1.0 FTE support staff, and 0.6 FTE probation supervisor. Total salary costs are \$333,193 per year, prorated in the first year to account for the effective date of the bill and the General Fund payday shift. Capital costs are \$29,097 in the first year. Operating costs are \$14,520 per year, which includes \$950 for support staff and \$2,950 for probation staff, and are also prorated in the first year.

***Department of Revenue.*** The Department of Revenue (DOR) is required to update its computer systems to change the classification of crimes required under this bill. These one-time costs are estimated as \$5,180 (70 hours of programming at \$74 per hour) and will be paid with cash funds.

In the out years, the department will also be required to conduct hearings for persons whose licenses are revoked due to the felony conviction. Drivers who are revoked due to a felony conviction must wait one year for a hearing. However, because these offenders are going to be sentenced to prison beginning in FY 2014-15 and the fiscal note assumes they will serve the minimum of one-year in the DOC, there is no increase in the delay to apply for reinstatement. This analysis assumes that 58 percent of offenders will apply for reinstatement once eligible. This results in the following increases in hearings:

- FY 2014-15, no increase; and
- FY 2015-16 and each year thereafter, 58 percent of the 2,700 offenders, for a total of about 1,570 new hearings per year.

As a hearings officer can hear about 2,000 hearings per year, a total of 0.8 FTE is required in the DOR beginning in FY 2015-16. The cost is \$45,437 per year, prorated in the first year to account for the General Fund payday shift. Operating costs are \$760 per year and capital outlay costs of \$3,762 are required in the first year.

***Office of the State Public Defender (OSPD).*** The OSPD is anticipated to increase workload under the bill by 0.8 FTE at a cost of \$53,264 per year. This includes 0.5 FTE attorney, 0.2 FTE investigator, and 0.1 FTE legal assistant. Salary is prorated in the first year. Standard operating costs and capital outlay are provided. In addition, travel costs are estimated as \$667 per year and attorney registration as \$180 per year.

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

*Department of Corrections.* Under House Bill 13-1214, certain DUI-offenses become eligible for sentencing as a class 5 felony. Based on the assumptions listed above, this analysis assumes that 675 offenders will be sentenced to prison and will serve the minimum of the presumptive range for the offense, or 12 months each. 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 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. Based on current incarceration trends and their projected impact on prison bed capacity, this fiscal note assumes that the impact of this bill will be accommodated through the use of private contract prisons. It should be noted that the state is currently studying prison utilization rates and if incarceration trends in the future should change, it is possible that the DOC will require an increase in capital construction funds. Should this occur, additional moneys will be requested through the annual budget process.

Offenders placed in a private contract prison cost the state about \$57.03 per offender per day, including the current daily rate of \$52.69 and an estimated \$4.34 per offender per day for medical care provided by the DOC. Table 3 shows the estimated cost of the bill over the next five fiscal years. It should be noted that this amount represents the minimum cost. Costs could also increase as a result of probationers being sent to prison as a result of a technical violation or if offenders are sentenced to terms longer than the minimum of the presumptive range for a class 5 felony (one year).

<b>Fiscal Year</b>	<b>Inmate Bed Impact</b>	<b>Construction Cost</b>	<b>Operating Cost</b>	<b>Total Cost</b>
FY 2013-14	0.0	\$0	\$0	\$0
FY 2014-15	675.0	0	14,051,516	14,051,516
FY 2015-16	675.0	0	14,051,516	14,051,516
FY 2016-17	675.0	0	14,051,516	14,051,516
FY 2017-18	675.0	0	14,051,516	14,051,516
<b>Total</b>		\$0	\$56,206,064	\$56,206,064

**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.

<b>Table 4. Expenditures Not Included Under HB13-1214*</b>					
<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Employee Insurance	\$164,459	\$164,459	\$169,844	\$169,844	\$169,844
Supplemental Employee Retirement Payments	102,165	115,589	132,941	146,774	153,691
<b>TOTAL</b>	<b>\$266,624</b>	<b>\$280,048</b>	<b>\$302,785</b>	<b>\$316,618</b>	<b>\$323,535</b>

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

**Local Government Impact**

Overall, this bill is expected to reduce revenue and increase costs for local governments.

First, by requiring that cases covered by the bill be heard in district court, costs for the City and County of Denver's courts will be reduced. In addition, revenue from docket fees paid by about 440 offenders will be reduced by about \$9,240 per year.

Second, by requiring that all probationers be sentenced to a mandatory period of 90 days to one year in a county jail, costs will increase. This analysis assumes that a total of 1,350 new offenders will be sentenced to a county jail. Under current law, persons convicted of three or more DUI-related offenses are required to be sentenced to a mandatory period of 60 days to one year in a county jail. Currently, about 675 offenders (25 percent of the estimated 2,700) are sentenced to county jail each year for varying sentences. The fiscal note assumes these individuals will now be sentenced to the DOC. However, the remaining 2,025 offenders assumed to be sentenced to probation will receive a sentence of between 90 days and one year. The net effect of this change is to increase the number of offenders sentenced to a county jail by 1,350 per year. 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 at a daily rate of \$50.44 to house state inmates.

Third, about 300 offenders (75 percent of 396 offenders that meet the criteria of this bill) that would currently be sentenced to probation in the City and County of Denver will now be sentenced to probation under the Judicial Branch. This results in a reduction in probation supervision fees of about \$178,200 in the first year, and \$356,400 in future years. A corresponding reduction in workload is assumed.

Finally, the bill reduces fees collected from offenders for the Victim Assistance Fund. Assuming that the City and County of Denver collects a fee of \$85 from about 400 offenders, revenue is reduced by a total of \$33,660.

### **Departmental Differences**

The Office of the State Public Defender estimated it requires an additional \$8,742 per year for leased space. This cost is to provide lease space funding for 22 regional trial offices which are not housed in the Carr Center. The fiscal note does not include these costs because the 0.8 FTE will not be housed in the same location and this analysis assumes that existing space is sufficient for the small increase in FTE.

### **State Appropriations**

For FY 2013-14, the following adjustments in appropriations are required:

- The Judicial Branch requires an appropriation of \$1,691,474 General Fund and 19.7 FTE;
- The Office of the State Public Defender requires an appropriation of \$49,693 General Fund and 0.7 FTE;
- The Department of Revenue requires an appropriation of \$5,180 cash funds from the Driver's License Revocation Account, the entire amount of which should be reappropriated to the Governor's Office of Information Technology; and
- The Department of Corrections requires the five-year appropriations shown in Table 3.

### **Departments Contacted**

Corrections	District Attorneys	Judicial
Local Affairs	Public Defenders	Revenue