

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 13-0094
Prime Sponsor(s): Sen. Steadman; King
 Rep. Levy

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Bill Status: Senate Appropriations
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TITLE: CONCERNING CHANGES TO SENTENCING OF PERSONS CONVICTED OF DRUG CRIMES.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015
State Revenue General Fund	<10,000	<10,000
State Expenditures General Fund	\$861,614	(\$3,917,694)
FTE Position Change	6.3 FTE	9.6 FTE
Effective Date: October 1, 2013.		
Appropriation Summary for FY 2013-2014: See State Appropriations section.		
Local Government Impact: Increased costs—see Local Government Impact section.		

Summary of Legislation

This bill makes a number of changes to current law concerning the sentencing of individuals convicted of drug-related offenses. In particular, it:

- creates new felony and misdemeanor drug sentencing grids, as shown in Table 1;
- assigns each existing drug crime a new drug penalty based on the new sentencing grids;
- adds all drug felonies to the habitual sentencing schemes;
- establishes a sentencing option for offenders convicted of certain drug felonies that allows the court to vacate the felony conviction and enter a misdemeanor conviction in its place if the offender successfully completes a community-based sentence (probation or community corrections);
- requires the court to exhaust alternative sentencing options for certain level 4 drug felony offenses prior to sentencing an offender to prison;
- requires the court to hold a resentencing hearing or make written findings for any level 4 drug felony offender who is terminated from a community corrections program;
- allows the court to impose residential drug treatment as a probation condition for drug misdemeanors;

- allows defendants convicted of misdemeanor drug offenses to be sentenced to intensive supervision probation if appropriate; and
- prohibits a plea agreement involving a drug offense from requiring a waiver of the defendant's right to petition for sealing of his or her criminal conviction records.

Table 1. New Misdemeanor and Felony Drug Sentencing Scheme Under SB13-250		
Drug Misdemeanors (DM)		
Level	Minimum Sentence	Maximum Sentence
DM1	6 months imprisonment, \$500 fine, or both	18 months imprisonment, \$5,000 fine, or both
DM2	\$50 fine	12 months imprisonment, \$750 fine, or both
Drug Felonies (DF)		
Level	Presumptive Range	Mandatory Parole Period
DF1	8 to 32 years imprisonment, \$5,000 to \$1 million fine, or both	3 years
DF2	4 to 8 years imprisonment, \$3,000 to \$750,000 fine, or both	2 years
DF3	2 to 4 years imprisonment, \$2,000 to \$500,000 fine, or both	1 year
DF4	6 months to 1 year imprisonment, \$1,000 to \$100,000 fine, or both	1 year
Level	Aggravated Range	Mandatory Parole Period
DF2	8 to 16 years imprisonment, \$3,000 to \$750,000 fine, or both	2 years
DF3	4 to 6 years imprisonment, \$2,000 to \$500,000 fine, or both	1 year
DF4	1 to 2 years imprisonment, \$1,000 to \$100,000 fine, or both	1 year

The Division of Criminal Justice (DCJ) in the Department of Public Safety is required to collect data between October 1, 2013, and September 30, 2016, and generate a report on the impact of the bill by December 31, 2016. Data that are to be collected must include the following:

- the nature of the charges filed by jurisdiction;
- all demographic information about the defendants; and
- specific outcome data on the charges.

Finally, the bill authorizes the Colorado District Attorneys' Council (CDAC) to receive, manage, and expend state funds, subject to appropriation by the General Assembly, on behalf of the district attorneys who are members of the CDAC.

State Revenue

Individuals on probation pay a probation supervision fee of \$50 per month. The bill is expected to generate new probation cases in some areas and reduce existing probation cases in others. While the net impact of the bill is expected to be an increase in cases, the increase in probation supervision fee revenue is expected to be under \$10,000 per year, due to a 30 percent indigency rate and a relatively low collection rate for the fees.

As shown in Table 1, fines for the offenses affected by the bill range from \$50 to \$1 million. Unless otherwise provided by law, the fines are to be deposited in the state Fines Collection Cash Fund for annual appropriations to cover associated administrative and personnel costs. All unexpended balances of the cash fund revert to the state General Fund at the end of each fiscal year. Because the courts have the discretion of incarceration or imposing a fine, the impact to the cash fund and the General Fund cannot be determined.

State Expenditures

The bill will result in both increased and decreased costs to state agencies. Table 2 provides an overview of state expenditures related to the bill. Further details are provided in the following sections.

Table 2. State Expenditures Under SB 13-250		
Cost Components	FY 2013-14	FY 2014-15
Judicial Personal Services	\$305,610	\$462,677
Judicial FTE	4.8	7.6
Judicial Operating Expenses	4,560	7,220
Judicial Capital Outlay	24,194	17,140
Judicial Safety Equipment and Travel	5,400	10,800
Judicial Branch Subtotal	\$339,764	\$497,837
Corrections Personal Services	100,319	133,759
Corrections FTE	1.5	2.0
Corrections Operating Expenses	1,425	1,900
Corrections Capital Outlay	9,406	0
Contract IT Costs	410,700	448,810
Corrections Bed Impact	0	(5,000,000)
Corrections Subtotal	\$521,850	(\$4,415,531)
TOTAL	\$861,614	(\$3,917,694)

Judicial Branch. The fiscal note estimates that the bill will have a General Fund impact to the branch of \$339,764 and 4.8 FTE in FY 2013-14 and \$497,837 and 7.6 FTE in FY 2014-15, as explained below.

Trial courts. The bill will increase the workload of the state's trial courts in some ways (resentencing hearings or written findings upon termination from community corrections and possible additional filings related to escapes from community corrections) and decrease it in others (felony offenses changed to misdemeanors moving cases from District Court to County Court and an amended procedure for sealing criminal conviction records, both requiring less time per case). The net impact of the workload changes to the trial courts is not expected to require additional resources and will be managed within current appropriations.

Probation. As with the trial courts, the workload of the probation department will both increase and decrease as a result of the bill, resulting in a net impact of \$219,878 and 3.3 FTE in FY 2013-14 and \$422,615 and 6.6 FTE each year thereafter. Based on the bill's effective date, October 1, and accounting for the time it takes for crimes to be committed, investigated, tried, and sentenced, the impact to probation is only being shown for six months in year 1.

Increased needs are related to:

- providing notification reports to the court of successful probation completion by DF4 offenders;
- more DF4 offenders sentenced to probation pursuant to the exhaustion of remedies provision in the bill;
- additional information required for the presentence investigation report to the court for DF4 offenders; and
- additional high risk offenders sentenced to probation as a result of the offense of unlawful use of marijuana in a detention facility being reclassified from a class 5 felony to a DM1.

Additionally, fewer individuals are expected to be sentenced to probation for offenses related to marijuana and marijuana concentrate as a result of the passage of Amendment 64 to the Colorado Constitution and the changes in section 11 of the bill.

Information technology needs. New charge classes for drug offenses require reprogramming of the state's court case management database. A programmer and an analyst (\$119,887 and 1.5 FTE total) will be required to make and test the necessary changes in the portion of FY 2013-14 that falls after the effective date of the bill. Additionally, the branch will require \$75,222, along with 0.5 FTE for a programmer and 0.5 FTE for an analyst in FY 2014-15 to work with other state agencies to properly handle Judicial charge transfers while the other agencies, primarily the Department of Corrections, modify their own systems for compatibility.

Department of Corrections (DOC). The DOC will require a General Fund appropriation of \$521,850 and 1.5 FTE in FY 2013-14 and \$584,469 and 2.0 FTE in FY 2014-15, which should be reappropriated to the Governor's Office of Information Technology (OIT). Additionally, beginning in FY 2014-15, the DOC will require a General Fund reduction of up to \$5 million per year.

Bed impact. Based upon historical patterns of conviction, approximately 550 offenders each year will be reclassified as DF4 offenders and given the opportunity to successfully complete probation or a diversion community corrections program in lieu of being incarcerated in a DOC facility. The fiscal note assumes that 40 percent of the 550 offenders, or 220 offenders, will successfully complete an alternate sentence and avoid incarceration completely. The other 60 percent, 330 offenders, will continue to end up in a DOC facility. Additionally, the reclassification of offenses is expected to result in some shorter and some longer lengths of stay in the DOC. In total, the bill is expected to save approximately \$5 million per year, beginning in FY 2014-15, to give time for crimes to be committed, investigated, tried, and sentenced.

Information technology needs. A large number of DOC computer programs, applications, and databases will be affected by the bill and will require significant IT programming changes, testing, and maintenance. The efforts are expected to take approximately three years for four contract programmers and analysts to complete because the systems are widespread and interdependent and attempting to do the work more quickly poses a risk to the security and stability of the systems. Additionally, 2.0 FTE will be required on an ongoing basis for implementation, maintenance, and support.

Office of the State Public Defender (OSPD). The bill is expected to impact the workload of the OSPD. However, a lack of case data associated with new offense substances, quantities, and schedules makes it impossible to quantify the change in workload. As such, any change in expenditures will be addressed through the annual budget process.

Department of Public Safety. The bill requires the DCJ to collect data and generate a report regarding the outcomes associated with the bill, though the deadline for the report is not until December 2016. While this will increase the workload for the division, the increase is expected to be manageable within existing resources. If the increased workload is greater than expected, the department will request additional funding through the annual budget process.

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 3.

Table 3. Expenditures Not Included Under SB 13-250*		
Cost Components	FY 2013-14	FY 2014-15
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$38,115	\$58,080
Supplemental Employee Retirement Payments	24,916	41,419
TOTAL	\$63,031	\$99,499

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

Local Government Impact

The bill could result in higher costs for county jails, as some current felonies will become misdemeanors. Additionally, local law enforcement agencies, county sheriffs, and district attorneys' offices will need to provide training about the significant changes to the law and computer systems will likely need to be changed. The fiscal note is unable to quantify any increase in costs to local governments due to a lack of information. If such information becomes available at a later date, the fiscal note may be updated.

Comparable Crimes

Section 2-2-322 (2.5), Colorado Revised Statutes, requires fiscal notes for bills that create new crimes or change the penalties or elements of an existing crime to contain:

- a description of the elements of the new crime or the new, amended, or additional elements of an existing crime;
- an analysis of whether the new or amended crime can be charged under current law;
- a comparison between the proposed crime classification and associated penalties of the new crime and other similar offenses; and
- an analysis of the current and anticipated future prevalence of the criminal behavior addressed by the bill.

Attachment A lists each statute being affected by the bill, very basic elements of the offense, the current penalty class for the offense, the proposed penalty class under the bill, and the number of cases filed for each offense during the period of August 10, 2010, through August 10, 2012. The bill will reduce the number of offenders who receive a felony drug conviction and spend significant time in prison. It will provide more offenders with chances to be diverted from periods of incarceration. In time, it could reduce recidivism, but in the short-term, it is not expected to result in a change in the number of crimes being committed.

State Appropriations

For FY 2013-14, the Judicial Branch requires a General Fund appropriation of \$339,764 and 4.8 FTE. The Department of Corrections requires a General Fund appropriation of \$521,850 and 1.5 FTE, which should be reappropriated to the Governor's Office of Information Technology.

Departments Contacted

Corrections District Attorneys Human Services Judicial Public Safety
Sheriffs

Attachment A

Statute	Drug	Current Action	Current Class	D1	D2	D3	D4	DM1	DM2	PO	X-Not Recognized	Grand Total
18-18-403.5(2)(a)(I)	Sch I or II	Possession < 4g	F6				2,074					2,074
18-18-403.5(2)(a)(II)	Sch I or II	Possession > 4g	F4				649					649
18-18-403.5(2)(b)(I)	Meth	Possession < 2g	F6				1,274					1,274
18-18-403.5(2)(b)(II)	Meth	Possession > 4g	F4				280					280
18-18-403.5(2)(c)	Sch III,IV,V	Possession any	M1					2,050				2,050
18-18-404(1)	Any	Use	M2						356			356
18-18-404(1)(a)(I)	Any	Use	M2						2			2
18-18-405(2)(a)(I)	Sch I or II	Distribution < 25g	F3			15						15
18-18-405(2)(a)(I)(A)	Sch I or II	Distribution < 25g	F3		200	689						889
18-18-405(2)(a)(I)(B)	Sch I or II	Distribution < 25g	F2		10							10
18-18-405(2)(a)(II)(A)	Sch III	Distribution < 25g	F4			65	98					163
18-18-405(2)(a)(III)(A)	Sch IV	Distribution < 25g	F5			70	104					174
18-18-405(2)(a)(IV)(A)	Sch V	Distribution < 25g	M1					54				54
18-18-405(2)(d)(I)											5	5
18-18-405(2.3)(a)(I)											3	3
18-18-405(3)(a)(I)	Sch I or II	Distribution 25g - 450g	F3	17	72							89
18-18-405(3)(a)(II)	Sch I or II	Distribution 450g - 1,000g	F3	4	10							14
18-18-405(3)(a)(III)	Sch I or II	Distribution >1,000g	F3	4	6							10
18-18-405(5)	Sch I or II	Distribution > 25g w/in 6 m o	F3	5								5
18-18-405(7)	Sch I or II	Distribution to minor	F3	2								2
18-18-406(1)	Marijuana	Possession < 2oz	PO2							460		460
18-18-406(2)	Marijuana	Failure to appear	M3						1			1
18-18-406(3)(a)	Marijuana	Display < 2oz	PO2							31		31
18-18-406(4)(a)	Marijuana	Possession 2oz - 6oz	M2						120			120
18-18-406(4)(a)(I)	Marijuana	Possession 2oz - 6oz	M2						38			38
18-18-406(4)(a)(II)									1			1
18-18-406(4)(b)	Marijuana	Possession 6oz - 12oz	M1					359				359
18-18-406(4)(c)	Marijuana	Possession > 12oz	F6				141					141
18-18-406(5)	Marijuana	Transfer < 2oz	PO2							4		4
18-18-406(6)(a)(II)(A)	Marijuana	Manufacture any	F4			4						4
18-18-406(6)(a)(II)(B)	Marijuana	Manufacture any subsequent conviction	F3			1						1
18-18-406(6)(b)(III)(A)	Marijuana	Distribute < 5 lbs	F5			109	24	220				353
18-18-406(6)(b)(III)(B)	Marijuana	Distribute 5lbs - 100lbs	F4	10	45							55
18-18-406(6)(b)(III)(C)	Marijuana	Distribute > 100 lbs	F3	7	6							13
18-18-406(6)(b)(III)(D)	Marijuana	Distribute any subsequent conviction	F3			1						1
18-18-406(7)(a)	Marijuana	Distribute 2oz - 5lbs to minor under 18	F4			1						1
18-18-406(7)(c)	Marijuana	Distribute any to minor under 15	F3		3							3
18-18-406(7.5)(a)	Marijuana	Cultivate <6 plants	M1					73				73
18-18-406(7.5)(b)	Marijuana	Cultivate 6 - 30 plants	F5				55					55
18-18-406(7.5)(c)	Marijuana	Cultivate > 30 plants	F4			87						87
18-18-406(8)(b)(I)											1	1
18-18-406.1	Synthetic Cannabanioids	Possession any	M2						26			26
18-18-406.2(1)(a)	Synthetic Cannabanioids	Distribution	F5			4						4
18-18-406.5(1)	Marijuana	Possession or use < 8oz	F6,F5				7					7
18-18-406.7	Cathinones	Possession any	M1								1	1
18-18-411(2)(a)	Any	Open or maintain property for use	M1					1				1
18-18-411(2)(b)	Any	Manage or control property for use	M1					1				1
18-18-412	Toxic vapors	Abuse	PO1						37			37
18-18-412.5	Methamphetamine	Possession of materials	F3		7							7
18-18-412.8(2)(b)	Methamphetamine	Sale of precursor drugs	M2						1			1
18-18-413	Any	Unauthorized possession	PO1							8		8
18-18-414(1)(e)	Sch III,IV,V	Refill 6 months after date	M						2			2
18-18-415(1)(a)	Any	Fraud and Deceit	F6				206					206
18-18-415(1)(c)	Any	Fraud and Deceit	F6				4					4
18-18-415(1)(d)	Any	Fraud and Deceit	F6				7					7
18-18-415(1)(e)	Any	Fraud and Deceit	F6				48					48
18-18-416	Any	Inducing consumption	F4			1						1
18-18-422(1)(a)	Imitation controlled substances	Possess with intent to distribute	F5,F4				70					70
18-18-422(3)	Imitation controlled substances	Advertise	M1					6				6
18-18-423(2)	Counterfeit substances	Drug label	F5			1						1
18-18-428(1)	Drug paraphernalia	Possession	PO2							1,366		1,366
18-18-429	Drug paraphernalia	Manufacture, sale, delivery	M2						6			6
18-18-430	Drug paraphernalia	Advertise	M2						2			2
Grand Total				49	359	1,048	5,041	2,764	592	1,869	10	11,732

Source: Judicial Branch's ICON System . Cases filed 8/10/2010 to 8/10/2012