

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 14-0583
Prime Sponsor(s): Rep. Waller; Saine

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Bill Status: House Judiciary
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SHORT TITLE: FELONY FOR REPEAT DUI OFFENDERS

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016	FY 2016-2017
State Revenue	<u>\$228,836</u>	<u>\$490,682</u>	<u>\$537,905</u>
Cash Funds	228,836	490,682	537,905
State Expenditures	<u>\$2,045,955</u>	<u>\$18,164,226</u>	<u>\$34,291,114</u>
General Fund	1,779,996	17,851,107	33,964,032
Centrally Appropriated Costs**	265,959	313,119	327,082
FTE Position Change	20.4 FTE	24.4 FTE	24.4 FTE
Appropriation Required: \$1,779,996 - Multiple Agencies (FY 2014-15)			

* 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 crime classification for certain DUI-related offenses from misdemeanor to class 4 felony. Under current law, driving while under the influence (DUI), DUI *per se*, or driving while ability impaired (DWAI) is an unclassified misdemeanor. This bill makes DUI, DUI *per se*, and DWAI a class 4 felony, if:

- the violation occurred within seven years of the first of two prior convictions for DUI, DUI *per se*, DWAI, vehicular homicide in which drugs and/or alcohol were involved, or vehicular assault in which drugs and/or alcohol were involved; or
- the violation occurred after three prior convictions for DUI, DUI *per se*, DWAI, vehicular homicide in which drugs and/or alcohol were involved, or vehicular assault in which drugs and/or alcohol were involved.

Additionally, the bill removes provisions in current law relating to the crime of aggravated driving with a revoked license when the offender also commits DUI, DUI *per se*, vehicular homicide in which drugs and/or alcohol were involved, or vehicular assault in which drugs or alcohol were involved.

Background

Driving while under the influence (DUI) occurs when a person drives a motor vehicle while under the influence of drugs, alcohol, or both. Driving while ability impaired (DWAI) occurs when a person drives a motor vehicle while impaired by drugs, alcohol, or both. DUI *per se*, occurs when a person has a blood alcohol content (BAC) of 0.08 or more at the time of driving, or within two hours after driving. These offenses are charged as unclassified misdemeanors under current law.

State Revenue

Changing the crime classification for certain DUI-related offenses from misdemeanors to class 4 felonies will increase state cash fund revenue in the Judicial Department by up to \$228,836 in FY 2014-15, \$490,682 in FY 2015-16, and \$537,905 in FY 2016-17.

Table 1 shows the changes in revenue and is adjusted to reflect the bill's effective date. Revenue estimates have also been adjusted to account for indigency and payment rates of these offenders, which vary widely. The fiscal note assumes an indigency 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 year 2 and each year thereafter, until the fine is paid in full. Revenue calculations are based on an assumed 2,700 cases in FY 2014-15 and 3,000 cases per year thereafter.

Table 1. Revenue Change under HB 14-1036			
Fee	FY 2014-15	FY 2015-16	FY 2016-17
Increase Victim Assistance Fee - \$78 to \$163	\$44,217	\$78,610	\$96,626
Denver Cases Paying Victim Assistance Fee - \$163	14,230	25,294	31,088
Subtotal	\$58,447	\$103,904	\$127,714
Increase Docket Fee - \$21 to \$35	\$7,283	\$12,947	\$15,915
Denver Cases Paying Docket Fee - \$35	3,056	5,431	6,676
Subtotal	\$10,339	\$18,378	\$22,591
Probation Supervision Fee	\$160,050	\$368,400	\$387,600
Criminal fine penalty (class 4 felony)	increase	increase	increase
Total	\$228,836	\$490,682	\$537,905

Fine and fee revenue increases. By increasing the penalty for certain DUI-related offenses from an unclassified misdemeanor to a class 4 felony, fine revenue is expected to 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 by an estimated \$58,447 in FY 2014-15, \$103,904 in FY 2015-16, and \$127,714 in FY 2016-17. Currently, misdemeanants pay a fee of \$78. Under the bill, the fee will increase by \$85 to \$163, which is the amount levied against persons who commit felonies. A total of 2,569 offenders in state courts will pay the increased fee amount. Additionally, 431 offenders who are currently convicted in the City and County of Denver will pay the entire \$163 fee to the state. For FY 2014-15, the number of offenders paying the fine will be approximately 2,312 currently in state courts and 388 offenders from the City and County of Denver.

Revenue from docket fees will also increase by an estimated \$10,339 in FY 2014-15, \$18,378 in FY 2015-16, and \$22,591 in FY 2016-17, credited to the Judicial Stabilization Cash Fund. In county courts, this fee is \$21 versus the \$35 fee charged in district courts. This fiscal note assumes that 2,569 offenders in state courts will pay an increased fee of \$14, and that 431 offenders who are currently convicted in the City and County of Denver will pay the full \$35 to state courts. For FY 2014-15, the number of offenders paying the fine will be approximately 2,312 currently in state courts and 388 offenders from the City and County of Denver.

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. Currently, about 75 percent of the 431 offenders annually, or 323 persons, who are convicted of DUI, DWAI, or DUI *per se* in the City and County of Denver are sentenced to probation. 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 by an estimated \$160,050 in FY 2014-15, \$368,400 in FY 2015-16, and \$387,600 in FY 2016-17. The number of offenders paying the fee in FY 2014-15 is 291 due to the bill's effective date.

State Expenditures

Changing the crime classification for certain DUI-related offenses from misdemeanors to class 4 felonies will increase state expenditures by \$2,045,955 and 20.4 FTE in FY 2014-15, \$18,164,226 and 24.4 FTE in FY 2015-16, and \$34,291,114 and 24.4 FTE in FY 2016-17. Costs for the Judicial Department and Office of the State Public Defender (OSPD) are described in Table 2 and in the discussion that follows. Costs for the Department of Corrections (DOC) are shown in Table 3. All costs are based on the following assumptions:

- at least 3,700 cases will be required to be heard in a state-operated district court rather than in a state-operated county court; and
- 3,000 offenders, will be convicted of a class 4 felony rather than an unclassified misdemeanor, and 25 percent, or 750 offenders will be sentenced to the DOC for a term of approximately 28.1 months, which is the average length of stay in the DOC for drug offenses.

Table 2. Expenditures Under HB 14-1036			
Cost Components	FY 2014-15	FY 2015-16	FY 2016-17
Judicial Department - Trial Courts			
Personal Services	\$1,095,851	\$1,315,021	\$1,315,021
FTE	15.0 FTE	18.0 FTE	18.0 FTE
Operating Expenses	35,270	38,475	38,475
Capital Outlay Costs	294,341	0	0
Centrally Appropriated Costs**	201,808	233,992	244,597
Subtotal	\$1,627,270	\$1,587,488	\$1,598,093
Judicial Department - Probation Staff			
Personal Services	\$277,661	\$333,193	\$333,193
FTE	4.7 FTE	5.6 FTE	5.6 FTE
Operating Expenses	4,465	5,320	5,320
Capital Outlay Costs	28,218	0	0
Centrally Appropriated Costs**	55,937	69,835	72,834
Subtotal	\$367,160	\$408,348	\$411,347

Table 2. Expenditures Under HB 14-1036 (Cont.)			
Cost Components	FY 2014-15	FY 2015-16	FY 2016-17
Office of the State Public Defender			
Personal Services	\$37,096	\$44,515	\$44,515
FTE	0.7 FTE	0.8 FTE	0.8 FTE
Operating Expenses, Travel, Attorney Registration Fees	1,512	1,658	1,658
Capital Outlay Costs	4,703	0	0
Centrally Appropriated Costs**	8,214	9,292	9,651
Subtotal	\$51,525	\$55,465	\$55,824
TOTAL	\$2,045,955	\$2,051,301	\$2,065,264

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

Judicial Department. The bill changes the crime classification for certain DUI-related offenses from misdemeanor to class 4 felony. Felony cases are heard at the district court level and require more complex case processing than misdemeanor cases. An increase in jury trials and hearings can be expected as defendants are now facing the possibility of being sentenced to the DOC. Beginning in FY 2014-15, the Judicial Department will be required to add new staff at the district court level to accommodate the increased workload, including 4.5 FTE magistrates, 4.5 FTE division clerks, 4.5 FTE law clerks, and 4.5 FTE court reporters. For FY 2014-15, the number of FTE have been prorated to 15.0 FTE for trial courts due to the bill's effective date. Total salary costs are \$1,315,021 per year, prorated in the first year to account for the effective date of the bill and the General Fund paydate shift. Capital costs are \$294,341 in the first year to provide new court space and to provide resources to new staff. Per magistrate, \$51,300 is provided in capital outlay for the courtroom, furniture, library costs, conference room costs, and computer costs. Other staff are provided with standard computer (\$1,230) and furniture costs (\$3,473). Operating costs for magistrates are \$5,700 per magistrate per year and \$950 per year for other staff, and are prorated in the first year.

Probation staff will also be required to accommodate the approximately 323 offenders per year that will be served by the Judicial Department instead of the City and County of Denver. For FY 2014-15, the number of offenders is 291 to account for the bill's effective date and for the ramping up of the probation caseload, as each offender is assumed to serve two years on probation. Additional FTE requirements include 4.0 FTE probation officers, 1.0 FTE support staff, and 0.6 FTE probation supervisor. For FY 2014-15, FTE requirements have been prorated to 4.7 FTE. 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 paydate shift. Capital costs are \$28,218 in the first year. Operating costs are \$5,320 per year and are also prorated in the first year.

Office of the State Public Defender (OSPD). The OSPD will experience increased workload under the bill, requiring 0.8 additional FTE at a salary cost of \$44,515 per year, which includes 0.5 FTE deputy state public defender, 0.2 FTE investigator, and 0.1 FTE administrative support assistant. Standard operating costs of \$950 per year, travel costs of \$708 per year, and attorney registration fees of \$190 per year are also required. Capital outlay costs in the first year are \$4,703. Costs and FTE have been prorated in the first year.

Office of the Alternate Defense Counsel. The ADC represents clients when the person is indigent and 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.

Department of Corrections. Under the bill, certain DUI-related offenses are eligible for sentencing as a class 4 felony. Based on the assumptions listed previously, the fiscal note assumes that 750 offenders will be sentenced to prison annually and will have an average length of stay in the DOC of 28.1 months, which is the average length of stay for drug offenses. 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. 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 \$58.86 per offender per day, including the current daily rate of \$53.74 and an estimated \$5.12 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. Table 3 shows the estimated cost of the bill over the next five fiscal years.

Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2014-15	0.0	\$0	\$0	\$0
FY 2015-16	750.0	\$0	\$16,112,925	\$16,112,925
FY 2016-17	1,500.0	\$0	\$32,225,850	\$32,225,850
FY 2017-18	1,756.0	\$0	\$37,731,099	\$37,731,099
FY 2018-19	1,756.0	\$0	\$37,731,099	\$37,731,099
Total		\$0	\$123,800,974	\$123,800,974

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 2014-15	FY 2015-16	FY 2016-17
Employee Insurance	\$150,028	\$178,922	\$178,922
Supplemental Employee Retirement Payments	115,931	134,197	148,160
TOTAL	\$265,959	\$313,119	\$327,082

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

Local Government Impact

Overall, this bill is expected to reduce revenue and workload for local governments. Revenue from docket fees, probation supervision fees, and Victim Assistance Fund fees will be reduced by an estimated \$194,288 in FY 2014-15, \$414,086 in FY 2015-16, and \$433,286 in FY 2016-17. Additionally, court and probation staff workload will decrease as a result of cases being heard and sentenced in district court, rather than in county court.

Under the bill, DUI-related felony cases must be heard in district court, therefore, costs to the City and County of Denver to hear cases will decrease. Additionally, revenue from docket fees paid by approximately 431 offenders in the City and County of Denver will be reduced by about \$9,051 each year (431*\$21), prorated in the first year.

Next, about 323 offenders who would currently be sentenced to probation in the City and County of Denver will now be sentenced to probation under the Judicial Department. This results in a reduction in probation supervision fee revenue to the City and County of Denver of about \$160,050 in FY 2014-15, \$368,400 in FY 2015-16, and \$387,600 in FY 2016-17. The number of offenders paying the fee in FY 2014-15 is 291 due to the bill's effective date. It is assumed that probation staff workload in the City and County of Denver will also be reduced.

Finally, the bill reduces revenue collected from offenders in the City and County of Denver for the Victim Assistance Fund. Assuming the City and County of Denver collects a fee of \$78 from approximately 431 offenders, revenue will decrease by about \$33,618 each year, prorated in the first year.

Effective Date

The bill takes effect and applies to offenses committed on or after August 6, 2014, if the General Assembly adjourns on May 7, 2014, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2014-15, the Judicial Department requires an appropriation of \$1,736,685 General Fund and an allocation of 19.7 FTE, and the Office of the State Public Defender requires an appropriation of \$43,311 General Fund and an allocation of 0.7 FTE.

The Department of Corrections requires the five-year appropriation shown in Table 3.

State and Local Government Contacts

District Attorneys
Law
Public Safety
Alternate Defense Counsel

Corrections
Local Affairs
Revenue

Judicial
Public Defender
Sheriffs