

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 14-0878	Date: March 25, 2014
Prime Sponsor(s): Sen. Steadman; King Rep. Lee	Bill Status: Senate Judiciary
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SHORT TITLE: CLEAN-UP SB13-250 DRUG SENTENCING

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue		
Cash Funds	<\$5,000	<\$5,000
State Expenditures		
General Fund	Increase. See State Expenditures section.	
FTE Position Change		
Appropriation Required: None.		

* This summary shows changes from current law under the bill for each fiscal year.

Note: While all agencies were canvassed for the fiscal note, not all agencies were able to provide complete information for the fiscal analysis. Therefore, this fiscal note should be considered preliminary. It will be revised if new information becomes available.

Summary of Legislation

This bill makes various modifications to clarify and harmonize statutes for drug offenses enacted under Senate Bill 13-250. Among its many provisions, the bill:

- specifies that if a person has been twice convicted of a felony in any state within the United States, he or she is not eligible to receive a fine in lieu of any sentence and the court must sentence the person to at least the minimum of the presumptive sentencing range for the drug felony offense in addition to any fines;
- requires that if a person is convicted of a level 1 drug felony (DF1), he or she be sentenced for a period of at least 8 years but no more than 32 years;
- increases the minimum sentence for an aggravated DF1 from 8 years to 12 years and specifies the maximum sentence as no more than 32 years;
- adds the status of being on appeal bond following his or her conviction for a previous felony as an aggravating factor for all drug felony offenses except for a DF1;
- adds the status of being under a deferred judgment and sentence for another felony to the list of sentence-enhancing circumstances for all drug felony offenses except for a DF1;
- increases the penalty for criminal attempt or criminal conspiracy to commit a level 4 drug felony (DF4) from a level 1 drug misdemeanor (DM1) to a DF4;
- clarifies that drug misdemeanor 2 (DM2) offenses are eligible for both a period of incarceration, a fine, or both; and

- allows moneys from the Correctional Treatment Cash Fund to be used to serve offenders on bond or on summons with a pending criminal case in a pre-trial treatment program.

Background

Senate Bill 13-250 enacted comprehensive changes to the classification and penalties for drug related offenses. It took effect on October 1, 2013, and applied to offenses committed on or after this date. As such, there is insufficient information from which to make projections for SB14-163.

State Revenue

Beginning in FY 2014-15, the bill may increase state revenue by less than \$5,000 per year credited to the Fines Collection Cash Fund in the Judicial Department. The bill increases the penalties for criminal attempt or criminal conspiracy to commit a DF4 from a DM1 to a DF4. The fine penalty for a DM1 is \$500 to \$5,000 and the fine penalty for DF4 is \$1,000 to \$100,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to state revenue cannot be determined. To the extent that this increase in penalties causes less people to be sentenced to probation, revenue will decrease. An offender on probation pays \$50 per month in supervision fees.

The bill may also increase revenue from its provisions clarifying that persons convicted of a DM2 may be assessed a fine and a period of incarceration. Any increase from this provision is anticipated to be minimal.

State Expenditures

Overall, this bill will increase state expenditure by an indeterminate amount. Most of these costs are assumed to be within the Department of Corrections (DOC) and beyond the five-year appropriations window. The bill requires sentencing to the DOC for offenders with two prior felonies, increases the minimum sentence for DF1 offenses, adds elements to statutes related to aggravated factors and sentencing enhancers, and raises the penalty for criminal attempt and criminal conspiracy to commit a DF4. As of this writing, no information is available about the number of offenders to which this bill will apply. 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. The fiscal note assumes that the DOC will request any required increases in appropriations for future years through the annual budget process.

Judicial Department. The bill also allows moneys in the Correctional Treatment Cash Fund to be used for additional purposes, but this provision is not anticipated to increase overall spending from the cash fund. To the extent that enhanced penalties for criminal attempt and criminal conspiracy to commit a DF4 cause fewer people to be sentenced to probation, workload and costs for the Judicial Department will decrease. The fiscal note assumes any reductions will be minimal and not require an adjustment in appropriations.

Local Government Impact

The bill affects local governments in two ways. First, by raising the penalty for criminal attempt or criminal conspiracy to commit a DF4 from a DM1 to a DF4, it may reduce costs to incarcerate any offenders sentenced to jail for these offenses. 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 \$51.45 to house state inmates. To the extent that this change causes less offenders to be sentenced to probation, revenue and workload for the Denver County Court, which is not part of the state court system, will also decrease. An offender on probation pays \$50 per month in supervision fees. As of this writing, no data on the number of offenders sentenced to jail or probation for these offenses was available.

Second, the bill clarifies that the maximum penalty for a DM2 offense may include both a sentence to jail and a fine, rather than just one of these options. Depending on how courts have interpreted this language, the bill may increase jail costs. For offenses heard in Denver County Court, revenue may also increase. As of this writing, it is not known how many offenders were convicted of a DM2 and the sentencing dispositions of these offenders.

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. This bill changes the penalty for criminal attempt or criminal conspiracy to commit a DF4 from a DM1 to a DF4. As of this writing it is not known how many persons were convicted of either offense. For this reason, no information about sentencing dispositions, gender, or minority data is available.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, except Sections 8 and 13 through 20 take effect July 1, 2014.

State and Local Government Contacts

Corrections	Counties	District Attorneys
Human Services	Judicial	Law
Municipalities	Public Health and Environment	Public Safety
Sheriffs		