

**STATE AND LOCAL
FISCAL IMPACT**

Drafting Number: LLS 14-0032
Prime Sponsor(s): Rep. McNulty

Date: January 23, 2014
Bill Status: House Business, Labor, Economic,
and Workforce Development
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SHORT TITLE: DRUG TESTING CRIMINAL PROVISIONS

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue	<u><\$5,000</u>	<u><\$5,000</u>
Cash Funds	<\$5,000	<\$5,000
State Expenditures	Minimal 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.

Summary of Legislation

This bill establishes five new criminal offenses related to drug testing. Three crimes relate to using controlled substances in violation of a condition of employment or to knowingly defrauding a drug test. Those crimes are:

- a level 1 drug misdemeanor for an employee who is legally required to undergo drug testing as a condition of his or her job and who uses a controlled substance without a prescription;
- a level 1 drug misdemeanor for an employee who is legally required to undergo drug testing as a condition of his or her job and who knowingly defrauds the administration of a drug test; and
- a level 2 drug misdemeanor for any person who is not required to undergo drug testing as a condition of his or her job and who knowingly defrauds a drug test.

Two crimes relate to devices designed to defraud the administration of a drug test. Those crimes are:

- a level 1 drug misdemeanor for offering for sale or for manufacturing or selling a device designed to defraud the administration of a drug test; and
- a level 2 drug misdemeanor for possessing a device designed to defraud the administration of a drug test.

The bill defines actions that constitute defrauding the administration of a drug test, including the submission of urine that is from a person other than the person taking the drug test.

State Revenue

Beginning in FY 2014-15, this bill is anticipated to increase state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a level 1 drug misdemeanor is \$500 to \$5,000. The fine penalty for a level 2 drug misdemeanor is \$50 to \$750. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to state revenue cannot be determined, but is anticipated to be minimal.

State Expenditures

This bill is assessed as having a minimal impact on state expenditures. Although the number of cases filed has the potential to increase, the increase is not expected to require additional appropriations to any state agency.

Assumptions. This fiscal note assumes that:

- the five crimes created by the bill cannot be charged under current law;
- most employees will comply with conditions of employment related to drug testing; and
- some employers will continue to pursue administrative sanctions rather than criminal charges for employees who violate conditions of employment related to drug testing.

Judicial Department. Because the bill creates five new crimes, it is likely that cases filed in trial courts will increase. However, the number of cases filed is not expected to require additional appropriations to the Judicial Department. In addition, the bill is not expected to affect the workload or procedures of the Division of Probation Services. Individuals who are on probation are often required to abstain from alcohol and drugs, and are subject to regular testing. The division indicated that devices used to defraud drug tests are rarely confiscated from individuals on probation, and all urine collection is observed, making tampering rare.

Office of the State Public Defender and Office of the Alternate Defense Counsel. Workload for the Office of the State Public Defender and the Office of the Alternate Defense Counsel may increase, particularly if employees become indigent as a result of losing their job for violating drug provisions. However, any increase is not expected to require additional appropriations at this time. In the event that cases rise significantly in the future, adjustments will be addressed during the annual budget process.

Department of Corrections. The new crimes created by the bill will not change the procedures of the Department of Corrections regarding parolees who defraud tests for drugs or alcohol. Under current law, every parolee released from the Department of Corrections is required to submit to random drug and alcohol testing. Parolees who test positive for drugs or alcohol may be subject to increased supervision, referred to a treatment program, arrested, or have their parole revoked. Parolees who have their parole revoked return to the custody of the Department of Corrections. Parole officers have discretion to decide whether to begin revocation proceedings unless a parolee has been charged with a felony, crime of violence, or certain other crimes. The new crimes created by this bill would not mandate parole revocation, and are not expected to change the department's process in responding to incidents in which a parolee defrauds the administration of a drug test.

Local Government Impact

This bill impacts local governments by creating five new crimes, three of which are level 1 drug misdemeanors, and two of which are level 2 drug misdemeanors. Workload for district attorneys will increase to investigate and file new charges, and more people may be sentenced to county jails as a result of the bill. The penalty for a level 1 drug misdemeanor is 6 to 18 months in a county jail, a fine of \$500 to \$5,000, or both. The penalty for a level 2 drug misdemeanor is 0 to 12 months in a county jail, a fine of \$50 to \$750, 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. It is assumed that the impact of this bill will be minimal.

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.

Staff review indicates that the five new crimes created by the bill cannot be charged under current law. At this time, no data are available concerning employers' use of administrative penalties for behavior addressed by the bill. In addition, the Department of Labor and Employment does not track data on unemployment claims filed in connection to the use of alcohol or drugs. Although the bill creates new crimes related to employees who violate the conditions of employment, this fiscal note assumes that most employees will comply with the conditions of employment, and employers may continue to use administrative penalties rather than pursue criminal charges.

Because the fiscal note creates five new crimes that cannot be charged under current law, no information concerning gender and minority data related to potential offenders is available.

Effective Date

The bill takes effect on July 1, 2014, and applies to offenses committed on or after that date.

State and Local Government Contacts

Corrections
Human Services
Law
Public Safety
Transportation

Counties
Judicial
Local Affairs
Regulatory Agencies

District Attorneys
Labor and Employment
Municipalities
Sheriffs