



**Restricted driving privileges.** If, under current law, a driver has had his or her driving privileges revoked for certain DUI-related offenses, he or she is required to hold an interlock-restricted license for at least a year following reinstatement. This bill extends that requirement to a minimum of two years and a maximum of five years.

## **Background**

Driving while under the influence occurs when a person drives a motor vehicle while under the influence of drugs, alcohol, or both. Driving while ability impaired occurs when a person drives while impaired by drugs, alcohol, or both. DUI *per se* occurs when a person has a BAC of 0.08 or higher at the time of driving, or within two hours of driving.

**Historical data and assumptions for felony DUI.** In FY 2013-14, there were 24,124 DUI/DWAI cases statewide (including the Denver County Court). Of the cases filed, about 90 percent resulted in a conviction and 25 percent resulted in a jail sentence. Based on information provided by the Colorado District Attorneys' Council (CDAC), the average length of time between DUI offenses ranges from 39 to 44 months.

**Washington state.** The state of Washington has similar laws to the proposed changes under HB15-1043. An analysis of Washington data found that approximately 5.6 percent of its cases would be classified as group 1 cases and 4.7 percent would be classified as group 2.

**Sentencing for comparable crimes.** For informational purposes, staff analysis of other class 4 felonies that are not crimes against persons, included theft (\$20,000 to \$100,000) and attempted arson. This analysis found that the prison sentencing rate for theft is 31 percent and 63 percent for attempted arson. An analysis by the Judicial Department finds that across all class 4 felonies, 38 percent of offenders receive a term of incarceration in the DOC as part of the sentence.

## **Assumptions**

Revenue and costs in this fiscal note use the following assumptions:

- all DUI cases that meet the criteria of the bill (about 2,883) will transfer from a state county court or the Denver County Court to a district court operated by the state due to the new felony classification;
- 1,749 people per year will have had three or more DUI convictions and, as such, are classified as group 1 cases;
- 1,135 people per year will meet the criteria of the narrower time frames and more serious charges and are classified as group 2 cases;
- 15 percent of group 1 cases will be sentenced to prison for the minimum term and will serve an average length of stay of 15.8 months;
- 50 percent of group 2 cases will be determined to have meet the aggravating factors and, of that number, 50 percent will be sentenced to prison and serve an average length of stay of 30.0 months;
- 149 offenders per year convicted of aggravated driving without a driver's license will no longer be incarcerated in the DOC for an average of 19 months (sentencing data comes from the CDAC); and
- the Office of the State Public Defender (OSPD) will represent 70 percent of cases.

**State Revenue**

Table 1 shows the changes in revenue and is adjusted in the first year to reflect the bill's effective date. Revenue estimates have also been adjusted to account for indigence and payment rates of these offenders, which vary widely. The fiscal note assumes an indigence 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 each year thereafter, until the fine is paid in full.

<b>Table 1. Revenue Change under HB 15-1043</b>				
<b>Fee</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>
Increase Victim Assistance Fee - \$85 (from \$78 to \$163) Denver Cases Paying Victim Assistance Fee - \$163 <b>Subtotal</b>	-	\$13,563 7,812 <b>\$21,375</b>	\$23,844 13,717 <b>\$37,561</b>	\$29,253 16,785 <b>\$46,038</b>
Increase Docket Fee - \$14 (from \$21 to \$35) Denver Cases Paying Docket Fee - \$35 <b>Subtotal</b>	-	\$2,234 1,677 <b>\$3,911</b>	\$3,927 2,945 <b>\$6,872</b>	\$4,819 3,604 <b>\$8,423</b>
Probation Supervision Fee	-	<b>\$135,850</b>	<b>\$296,400</b>	<b>\$308,750</b>
Criminal fine penalty (class 4 felony)	-	potential increase	potential increase	potential increase
<b>Total</b>	-	<b>\$161,136</b>	<b>\$340,833</b>	<b>\$363,211</b>

**Fine and fee revenue increases.** By increasing the penalty for certain DUI-related offenses from an unclassified misdemeanor to felonies, cash fund fine revenue will 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. Currently, misdemeanants pay a fee of \$78. Under the bill, the fee will increase by \$85 to a total of \$163, which is the amount levied against persons who commit felonies. A total of 2,084 offenders in state courts will pay the increased fee amount. Additionally, as a result of transferring to district court, 232 offenders who are currently convicted in the City and County of Denver will pay the entire \$163 fee to the state.

Revenue from docket fees will also increase and be credited to the Judicial Stabilization Cash Fund. In county courts, this fee will increase by \$14 from \$21 versus the \$35 fee charged in district courts. Table 1 assumes that 2,084 offenders in state courts will pay an increased fee of \$14, and that 232 offenders who are currently convicted in the City and County of Denver will pay the full \$35 to state courts.

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. Under the bill, offenders annually who are convicted of DUI, DWAI,

or DUI *per se* in the City and County of Denver Court System and sentenced to probation will now be served by the state. 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.

***Fine and fee revenue decreases.*** For each of the 149 offenders convicted each year of aggravated driving with a revoked license, the victim assistance fee is reduced by \$85 and the docket fee is reduced by \$14. In addition, it is possible that fine revenue may decrease.

**TABOR Impact**

This bill increases state revenue from fees and fines, which will increase the amount of revenue required to be refunded under TABOR. TABOR refunds are paid from the General Fund.

**State Expenditures**

**Overall, this bill will increase state expenditures by \$2.4 million and 22.5 FTE in FY 2015-16, by \$11.2 million and 27.0 FTE in FY 2016-17, and by \$17.5 million and 27.0 FTE in FY 2017-18.** All costs in the first year have been prorated to reflect the bill's effective date and the General Fund payday shift. Costs are shown in Table 2 and discussed below.

<b>Table 2. Expenditures under HB 15-1043</b>			
<b>Cost Components</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
<b>JUDICIAL DEPARTMENT</b>	<b><u>\$1,978,369</u></b>	<b><u>\$1,936,567</u></b>	<b><u>\$1,936,567</u></b>
Personal Services	\$1,326,415	\$1,589,286	\$1,589,286
FTE	17.7	21.2	21.2
Operating Expenses and Capital Outlay Costs	406,219	40,090	40,090
Centrally Appropriated Costs	245,735	307,191	307,191
<b>OFFICE OF THE STATE PUBLIC DEFENDER</b>	<b><u>\$408,752</u></b>	<b><u>\$449,332</u></b>	<b><u>\$449,332</u></b>
Personal Services	263,801	317,589	317,589
FTE	4.8	5.8	5.8
Operating Expenses and Capital Outlay Costs	32,778	5,510	5,510
Centrally Appropriated Costs*	111,470	52,452	52,452
<b>DEPARTMENT OF CORRECTIONS (Table 3)</b>	<b>\$0</b>	<b><u>\$8,849,228</u></b>	<b><u>\$15,080,835</u></b>
<b>TOTAL</b>	<b><u>\$2,387,121</u></b>	<b><u>\$11,235,127</u></b>	<b><u>\$17,466,734</u></b>
<b>TOTAL FTE</b>	<b>22.5 FTE</b>	<b>27.0 FTE</b>	<b>27.0 FTE</b>

***Judicial Department — Trial courts.*** The bill changes the crime classification for certain DUI-related offenses from misdemeanors to felonies and results in about 2,883 felony cases that must be heard at the district court level. Felony cases require more complex case processing than misdemeanor cases, and an increase in jury trials and hearings can also be expected as defendants are now facing the possibility of being sentenced to the DOC. Additionally, the bill impacts the amount of time that a court must spend at a sentencing hearing to review information

related to a defendant's prior treatment history, treatment options, and risk level and to determine if incarceration is the most suitable option given the facts and circumstances of each case. Beginning in FY 2015-16, the Judicial Department will be required to add new staff at the district court level to accommodate the increased workload described above. For each of the 4.2 FTE new magistrates, a corresponding 1.0 FTE division clerk, 1.0 FTE court reporter, and 1.0 FTE law clerk is required.

**Judicial Department — Probation Division — Offender supervision.** Probation staff will be required to accommodate approximately 232 offenders that will be served by the Judicial Department instead of the City and County of Denver. It is assumed that offenders will serve two years on probation. This change requires 0.6 FTE probation supervisor, 3.2 FTE probation officers, and 0.6 FTE support services.

**Office of the State Public Defender.** The OSPD will experience increased workload under the bill to provide representation to approximately 70 percent of felony cases. The fiscal note assumes that 1.0 FTE attorney at the current misdemeanor level can process 248 cases per year, but only 170 cases at the felony level. Investigator, administrative staff, standard capital outlay, ongoing standard operating and leased space costs are also provided.

**Office of the Alternate Defense Counsel.** The ADC represents clients that are indigent when 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.

### **Five-Year Fiscal Impact on Correctional Facilities**

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 the 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 \$60.46 per offender per day, including the current daily rate of \$55.08 and an estimated \$5.38 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. Costs are shown in Table 3.

<b>Fiscal Year</b>	<b>Inmate Bed Impact</b>	<b>Construction Cost</b>	<b>Operating Cost</b>	<b>Total Cost</b>
FY 2015-16	0.0	\$0	\$0	\$0
FY 2016-17	401.0	\$0	\$8,849,228	\$8,849,228
FY 2017-18	683.4	\$0	\$15,080,835	\$15,080,835
FY 2018-19	825.9	\$0	\$18,224,922	\$18,224,922
FY 2019-20	825.9	\$0	\$18,224,922	\$18,224,922
<b>Total</b>			<b>\$60,379,908</b>	<b>\$60,379,908</b>

**Local Government Impact**

This bill affects local governments in several ways. First, it transfers some DUI cases from the separately administered and funded Denver County Court to the state managed Denver District Court. This will reduce revenue and costs for the Denver County Court in these cases. By increasing the penalty for these cases from a misdemeanor to a felony, workload and costs for district attorneys will increase. These amounts have not been estimated as of this writing.

Second, the bill transfers some cases of aggravated driving with a revoked license from Denver district court to Denver County Court. This will increase revenue and costs for the Denver County Court in these cases.

Third, by decreasing the penalty for cases of aggravated driving with a revoked license from a class 6 felony to a class 1 misdemeanor, workload and costs will also decrease for district attorneys. This bill requires that these cases receive a minimum sentence of 60 days in a county jail. Based on 2014 data from the DOC, the fiscal note assumes that approximately 149 persons per year will be sentenced to jail for a minimum of 60 days each year under this bill. For informational purposes, the cost to house an offender in county jails varies from about \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$52.74 to house state inmates.

**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. Please refer to the Background section above for information about the prevalence of existing offenses. For 2014 DUI cases, 73 percent of offenders were male and 27 percent were female. The racial makeup of these offenders was: 83 percent White, 8 percent Hispanic, 6 percent Black, 1 percent Asian, 1 percent Indian, and 1 percent Other.

**Effective Date**

The bill takes effect and applies to offenses committed on or after August 5, 2015, if the General Assembly adjourns on May 6, 2015, as scheduled, and no referendum petition is filed.

**State Appropriations**

For FY 2015-16, the bill requires the following new appropriations:

- \$1,978,369 General Fund to the Judicial Department and an allocation of 17.7 FTE;
- \$408,752 General Fund to the Office of the State Public Defender and an allocation of 4.8 FTE; and
- a five-year General Fund appropriation of \$60,379,908 to the Department of Corrections as shown in Table 3, above.

**State and Local Government Contacts**

Corrections  
Human Services  
Municipalities  
Sheriffs

Counties  
Judicial  
Public Safety

District Attorneys  
Law  
Revenue



**Colorado  
Legislative  
Council  
Staff**

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**M E M O R A N D U M**

March 23, 2015

**TO:** Members of the House Finance Committee  
**FROM:** Kerry White, Senior Fiscal Analyst (303-866-3469)  
**SUBJECT:** Fiscal Assessment of Proposed Amendment **HB1043\_L.010**.

This memorandum is an assessment of the fiscal impact of the attached proposed amendment to **HB15-1043**. This fiscal assessment is for the impact of the bill with inclusion of this amendment only. Any other added amendment could influence the fiscal impact.

**Summary of Proposed Amendment**

Amendment L.010 increases the penalty for a DUI to a class 4 felony **only** for a person who has three or more prior convictions of a DUI, DUI *per se*, or DWAI (driving while ability impaired); vehicular homicide; vehicular assault; or any combination thereof.

**Bill's Revised Fiscal Impact with Amendment**

If Amendment L.010 is adopted by the House Finance Committee, the bill's revised fiscal impact is summarized in the table below.

<b>Fiscal Impact Summary</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
<b>State Revenue</b>		<b><u>\$100,714</u></b>	<b><u>\$211,802</u></b>
Cash Funds		100,714	211,802
<b>State Expenditures</b>	<b><u>\$1,472,860</u></b>	<b><u>\$4,047,436</u></b>	<b><u>\$7,962,650</u></b>
General Fund	1,272,134	3,800,529	7,715,743
Centrally Appropriated Costs	200,726	246,907	246,907
<b>FTE Position Change</b>	14.2 FTE	16.9 FTE	16.9 FTE
<b>TABOR Set-Aside</b>		\$100,714	\$211,802
<b>Appropriation Required:</b> See State Appropriations section.			



HB1043\_L.010

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Finance.

HB15-1043 be amended as follows:

- 1 Amend printed bill, page 2, strike lines 12 and 13 and substitute "IS A
- 2 CLASS 4 FELONY IF THE VIOLATION OCCURRED AFTER THREE OR MORE
- 3 PRIOR".
  
- 4 Page 3, strike lines 5 through 20 and substitute "THEREOF".
  
- 5 Page 3, strike lines 26 and 27 and substitute "IF THE VIOLATION OCCURRED
- 6 AFTER THREE OR MORE PRIOR".
  
- 7 Page 4, strike lines 5 through 20 and substitute "THEREOF".
  
- 8 Page 6, strike lines 8 and 9 and substitute "CLASS 4 FELONY IF THE
- 9 VIOLATION OCCURRED AFTER THREE OR MORE PRIOR".
  
- 10 Page 6, strike lines 14 through 27 and substitute "THEREOF".
  
- 11 Page 7, strike lines 1 and 2.
  
- 12 Page 10, strike lines 12 and 13 and substitute "SECTION 42-4-1301 (1) (a),
- 13 (1) (b), AND (2) (a), a person who is convicted of DUI, DUI per se, or".
  
- 14 Page 11, line 2, after "C.R.S.;" add "AND".
  
- 15 Page 11, strike lines 6 through 8.

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