

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL  
REVISED FISCAL IMPACT**

(replaces fiscal note dated January 23, 2014)

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

**Date:** February 10, 2014  
**Bill Status:** House Second Reading  
**Fiscal Analyst:** Hillary Smith (303-866-3277)

**SHORT TITLE:** DRUG TESTING CRIMINAL PROVISIONS

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
<b>State Revenue</b>	<u>&lt;\$5,000</u>	<u>&lt;\$5,000</u>
Cash Funds	<\$5,000	<\$5,000
<b>State Expenditures</b>	Minimal Increase. See State Expenditures section.	
<b>FTE Position Change</b>		
<b>Appropriation Required:</b> None.		

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

**Summary of Legislation**

This bill, *as amended by the House Business, Labor, Economic & Workforce Development Committee* and the *House Judiciary Committee*, establishes two new unclassified petty offenses and fine penalties related to defrauding a drug test. Specifically, 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 is subject to a fine of:

- \$1,000 for a first offense;
- \$2,500 for a second offense; and
- \$5,000 for a third or subsequent offense.

Any other person who is not required to undergo drug testing as a condition of his or her job and who knowingly defrauds a drug test is subject to a fine of:

- \$500 for a first offense;
- \$1,000 for a second offense; and
- \$2,500 for a third or subsequent offense.

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 bill establishes two new unclassified petty offenses with fines ranging from \$500 to \$5,000. This fiscal note assumes that some instances of defrauding a drug test will continue to be handled by administrative procedures rather than by filing a case, and that overall fine revenue from cases that are filed will be less than \$5,000 for the first two years of the bill's implementation.

## **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 two 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 two 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 that 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 two new unclassified petty offenses, with fines ranging from \$500 to \$5,000. Workload for district attorneys may increase to investigate and file new charges, and filings may increase in the Denver County Court, but 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 two 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 two 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