

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
REVISED FISCAL IMPACT**

(replaces fiscal note dated February 25, 2014)

Drafting Number: LLS 14-0583 **Date:** April 8, 2014
Prime Sponsor(s): Rep. Waller; Saine **Bill Status:** House Appropriations
 Sen. King; Johnston **Fiscal Analyst:** Kristen Koehler (303-866-4918)

SHORT TITLE: FELONY FOR REPEAT DUI OFFENDERS

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016	FY 2016-2017
State Revenue	<u>\$258,538</u>	<u>\$559,082</u>	<u>\$609,905</u>
Cash Funds	258,538	559,082	609,905
State Expenditures	<u>at least \$3,410,756</u>	<u>at least \$15,190,119</u>	<u>at least \$26,815,308</u>
General Fund	2,928,084	14,628,179	26,229,485
Centrally Appropriated Costs**	482,672	561,940	585,823
FTE Position Change	37.7 FTE	45.4 FTE	45.4 FTE
Appropriation Required: \$2,928,084 - 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.

This fiscal note has been revised to reflect new information and amendments adopted by the House Judiciary Committee.

Summary of Legislation

As amended by the House Judiciary Committee, this bill changes the crime classification for certain DUI-related offenses from misdemeanors to class 4 felonies. 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.

Finally, the bill requires that a court exhaust all reasonable and appropriate alternative sentences before sentencing an offender to a term of imprisonment in the Department of Corrections (DOC), and requires the supervising agency to provide information to be considered by the court at the sentencing and re-sentencing stages.

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.

Historical Data and Assumptions. This fiscal note is based on the following information:

- In FY 2012-13, there were 24,632 DUI/DWAI misdemeanor cases filed statewide (including 2,692 from the City and County of Denver Court System), which is consistent with the number of DUI/DWAI cases filed annually;
- Historical data indicate that 15 percent of DUI/DWAI offenders have two or more prior DUI convictions, a proportion that is increasing. Thus, at least 3,700 of the 24,632 annual cases fall within the multiple-DUI parameters of the bill;
 - These 3,700 cases will be required to be heard in a state-operated district court rather than in a state-operated county court;
- Although data are not available on the number of people convicted of three DUI/DWAI offenses within seven years or whose prior offenses include aggravated driving, an estimated 3,000 DUI/DWAI convictions are assumed to be subject to the bill's enhanced penalties;
 - These 3,000 convictions will be for a class 4 felony rather than an unclassified misdemeanor;
 - Of the 3,000 convictions, 2,569 currently occur in state-run county courts and 431 occur in Denver;
- Currently, about 25 percent of DUI/DWAI offenders are sentenced to jail, while the remainder are sentenced to some form of probation;
 - The requirement for presentencing investigation reports, the increased options for sentencing felons compared to misdemeanants, and the requirement that courts exhaust all options before sentencing an offender to prison will reduce the number of offenders that are incarcerated compared to current law;
 - Between 540 and 690 offenders (18 - 23 percent) will be sentenced to prison under the bill and prison sentences will average 28.1 months, which is the average prison stay for class 4 felony drug offenses; and
 - The remaining 2,310 to 2,460 offenders (77 - 82 percent) will be sentenced to probation, including 1,927 offenders currently served by state probation services and 332 offenders who will be transferred from the City and County of Denver to state probation services.

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 about \$258,538 in FY 2014-15, \$559,082 in FY 2015-16, and \$609,905 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	\$189,750	\$436,800	\$459,600
Criminal fine penalty (class 4 felony)	increase	increase	increase
Total	\$258,538	\$559,082	\$609,905

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. Under the bill, at least 332 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. In addition, the increase in offenders from state-run county courts that will receive probation under the bill is at least 51 offenders. Offenders serving a probation sentence pay a \$50 per month probation supervision fee. This fee will now be paid to the state (for 332 offenders), rather than to the City and County of Denver. At least 51 additional offenders pay the fee as well, totaling 383 new offenders. Assuming each offender serves two years of probation, probation supervision fee revenue will increase by an estimated \$189,750 in FY 2014-15, \$436,800 in FY 2015-16, and \$459,600 in FY 2016-17. The number of offenders paying the fee in FY 2014-15 is 345 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 in the Judicial Department and in the Office of the State Public Defender by *at least* \$3,410,756 and 37.7 FTE in FY 2014-15, \$3,588,813 and 45.4 FTE in FY 2015-16, and \$3,612,696 and 45.4 FTE in FY 2016-17. Costs for the Judicial Department and the Office of the State Public Defender (OSPD) are described below and shown in Tables 2, 3, 4, and 5.

This bill will also increase state expenditures in the Department of Corrections by *at least* \$11,601,306 in FY 2015-16 and *at least* \$23,202,612 in FY 2016-17. No impact is expected in the first year because of the estimated time for criminal filing, trial, disposition, and sentencing. The estimated range of costs to the DOC are shown in Table 6.

Judicial Department — Trial Courts. The bill changes the crime classification for certain DUI-related offenses from misdemeanors to class 4 felonies and results in 3,700 additional 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 as determined by the risk assessment tool, and to determine if incarceration is the most suitable option given the facts and circumstances of each case.

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 described above. This requires 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 and salary costs have also been prorated to account for the General Fund paydate shift. Costs for the Judicial Department's trial courts are shown in Table 2.

Table 2. Judicial Department - Trial Courts - Expenditures Under HB 14-1036			
Cost Components	FY 2014-15	FY 2015-16	FY 2016-17
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
Total	\$1,627,270	\$1,587,488	\$1,598,093

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

Judicial Department — Probation Division - Offender Supervision. Under the bill, 77 to 82 percent of the 3,000 convicted offenders for felony DUI will be sentenced to probation. This includes 332 to 353 offenders that will be transferred from the City and County of Denver system ($431 \cdot .77 = 332$; $431 \cdot .82 = 353$) and 1,978 to 2,107 offenders in state-run county courts ($2,569 \cdot .77 = 1,978$; $2,569 \cdot .82 = 2,107$). Under current law, 1,927 offenders already receive probation

services from the Judicial Department, and therefore, the increase in offenders receiving probation services from the Judicial Department under the bill is between 383 and 533 offenders (332 to 353 Denver + 51 to 180 State Difference=383 to 533). It is assumed that offenders will serve two years on probation.

Assuming that 383 additional offenders receive a probation sentence under the bill, beginning in FY 2014-15, increased FTE requirements for the Judicial Department will be 5.3 FTE probation officers, 1.30 FTE support staff, and 0.7 FTE probation supervisor. For FY 2014-15, operating expenses and FTE requirements have been prorated to account for the bill's effective date and total salary costs have been prorated to reflect the General Fund payday shift. Table 3 shows the least-cost estimate of the bill; however, if the increase in the number of offenders sentenced to probation is greater than 383, these costs will increase.

Table 3. Judicial Department - Offender Supervision - Expenditures Under HB 14-1036			
Cost Component	FY 2014-15	FY 2015-16	FY 2015-16
Personal Services	\$363,402	\$436,082	\$436,082
FTE	6.0 FTE	7.3 FTE	7.3 FTE
Operating Expenses	5,700	6,935	6,935
Capital Outlay Costs	28,218	0	0
Centrally Appropriated Costs**	74,302	87,169	90,686
Total	\$471,622	\$530,186	\$533,703

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

Judicial Department — Probation Division — Pre-sentence Investigation Reports.

The bill requires that certain information be provided to the court by a supervising agency when a sentence to the DOC is being considered at the sentencing or re-sentencing stage. For each offender, the agency must provide the court with all sentencing and treatment options that have been tried, what other options for sentencing or treatment are available, the reasons why the options made available to the offender have not been successful, the risk level of the offender, and the risk the offender may pose to public safety. The requirement to collect and provide this information to the court will require the probation division to complete a pre-sentence investigation (PSI) report for a portion of initial sentences and an abbreviated report for the remaining portion of initial sentences. Revocation hearings will require an updated PSI.

Based on historical data, 1,500 convicted offenders will require a full PSI report at initial sentencing. In addition, 1,500 convicted offenders that would have had the initial sentencing PSI report requirements under current law waived, will now require an abbreviated report at initial sentencing to provide the new information to the court that is required by the bill. Assuming 77 percent of the 3,000 convicted offenders are initially sentenced to probation (2,310 persons), and based on the current probation revocation rate of about 20 percent, updated PSI reports will be required for 426 offenders at re-sentencing (2,310*.20). A full PSI report requires 11.85 hours per offender to complete, and abbreviated and updated reports require 5.93 hours per offender to complete. Beginning in FY 2014-15, this requires an increase of at least 14.0 FTE probation officers, 3.5 FTE support staff, and 1.8 FTE probation supervisors. In the first year, operating expenses and FTE requirements have been prorated to account for the bill's effective date and total salary costs have been prorated to reflect the General Fund payday shift. Table 4 shows the least cost estimate of the bill; however, if more than 77 percent of convicted offenders are sentenced to probation, costs to provide updated PSI reports at re-sentencing will increase from those shown.

Table 4. Judicial Department - PSI Reports - Expenditures Under HB 14-1036			
Cost Component	FY 2014-15	FY 2015-16	FY 2016-17
Personal Services	\$971,543	\$1,165,852	\$1,165,852
FTE	16.0 FTE	19.3 FTE	19.3 FTE
Operating Expenses	15,200	18,335	18,335
Capital Outlay Costs	75,248	0	0
Centrally Appropriated Costs*	198,348	231,487	240,889
Subtotal	\$1,260,339	\$1,415,674	\$1,425,076

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

Office of the State Public Defender (OSPD). The OSPD will experience increased workload under the bill, requiring 0.8 additional FTE 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. Costs and FTE have been prorated in the first year and are displayed in Table 5.

Table 5. Office of the State Public Defender Expenditures Under HB 14-1036			
Cost Components	FY 2014-15	FY 2015-16	FY 2016-17
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
Total	\$51,525	\$55,465	\$55,824

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

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.

Department of Corrections. Under the bill, certain DUI-related offenses are eligible for sentencing as class 4 felonies. Based on current sentencing patterns for misdemeanor DUI's, approximately 25 percent of convicted offenders receive a jail sentence and approximately 75 percent of convicted offenders receive a probation sentence. This fiscal note assumes that sentencing patterns will change as a result of the bill. The requirement for presentencing investigation reports, the increased options for sentencing felons compared to misdemeanants, and the requirement that courts exhaust all reasonable and appropriate options before sentencing an offender to prison will decrease the number of offenders that are incarcerated compared to current law. Based on these assumptions, the fiscal note assumes that between 18 and 23 percent of the 3,000 convicted DUI felony offenders per year (540 to 690 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 class 4 felony 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 6 shows the cost estimate to the DOC over the next five fiscal years, assuming a range of 540 to 690 additional offenders.

Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2014-15	0.0	\$0	\$0	\$0
FY 2015-16	540 - 690	\$0	\$11,601,306 - 14,823,891	\$11,601,306 - 14,823,891
FY 2016-17	1080 - 1380	\$0	\$23,202,612 - 29,647,782	\$23,202,612 - 29,647,782
FY 2017-18	1265 - 1616	\$0	\$27,166,392 - 34,712,611	\$27,166,392 - 34,712,611
FY 2018-19	1265 - 1616	\$0	\$27,166,392 - 34,712,611	\$27,166,392 - 34,712,611
Total		\$0	\$89,136,702 - 113,896,895	\$89,136,702 - 113,896,895

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 7.

Cost Components	FY 2014-15	FY 2015-16	FY 2016-17
Employee Insurance	\$277,014	\$332,400	\$332,400
Supplemental Employee Retirement Payments	205,658	229,540	253,423
TOTAL	\$482,672	\$561,940	\$585,823

*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 \$198,688 in FY 2014-15, \$424,286 in FY 2015-16, and \$444,086 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, 332 to 353 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. Assuming a reduction of 332 offenders, this results in a reduction in probation supervision fee revenue to the City and County of Denver of at least \$164,450 in FY 2014-15, \$378,600 in FY 2015-16, and \$398,400 in FY 2016-17. The number of offenders paying the fee in FY 2014-15 is 299 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 \$2,884,773 General Fund and an allocation of 37.0 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 range shown in Table 6.

State and Local Government Contacts

District Attorneys
Law
Public Safety
Alternate Defense Counsel

Corrections
Local Affairs
Revenue

Judicial
Public Defender
Sheriffs