

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL  
REVISED FISCAL IMPACT**

(replaces fiscal note dated April 16, 2014)

**Drafting Number:** LLS 14-0583 **Date:** May 6, 2014  
**Prime Sponsor(s):** Rep. Waller; Saine **Bill Status:** Senate 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	FY 2017-2018
<b>State Revenue</b>	<b>\$0</b>	<b>\$123,877</b>	<b>\$282,429</b>	<b>\$325,954</b>
Cash Funds	0	123,877	282,429	325,954
<b>State Expenditures</b>	<b>\$0</b>	<b>\$1,697,740</b>	<b>\$7,369,504</b>	<b>\$11,631,194</b>
General Fund	0	1,439,067	7,079,613	11,341,303
Centrally Appropriated Costs**	0	258,673	289,891	289,891
<b>FTE Position Change</b>	<b>0.0 FTE</b>	<b>19.8 FTE</b>	<b>22.5 FTE</b>	<b>22.5 FTE</b>
<b>Appropriation Required:</b> None.				

\* 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.

**Summary of Legislation**

**As amended by the Senate Judiciary Committee**, this bill changes the crime classification for certain DUI-related offenses from misdemeanors to felonies beginning July 1, 2015. 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 five 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.

Additionally, the bill makes DUI, DUI *per se*, and DWAI a class 5 felony, if:

- the violation occurred within 15 years after the first of 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.

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 are offenders who have two or more prior DUI offenses.
- Data indicate that approximately 1,610 of these cases meet the bill's time frame parameters for three DUIs in five years and four DUIs within 15 years.
- These 1,610 cases will be required to be heard in a state-operated district court rather than in a state-operated county court.
- Assuming a 90 percent conviction rate of these offenders, about 1,450 offenders will be convicted of felony under the bill.
- Of these 1,450 offenders, 960 will have four DUIs within 15 years and will be charged with a class 5 felony.
- 490 offenders will have three DUIs within five years and will be charged with a class 4 felony.
- Of the 1,450 convictions, 1,240 occur in state-run county courts and 210 occur in the City and County of Denver court system.
- 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 260 and 334 offenders (18 - 23 percent) will be sentenced to prison under the bill.
    - Between 88 and 114 offenders will be convicted of a class 4 felony and between 172 and 220 offenders will be convicted of a class 5 felony.
    - Class 4 felons will serve approximately 28.1 months, which is the average length of stay in the DOC for class 4 felony drug offenses.
    - Class 5 felons will serve approximately 19.7 months, which is the average length of stay in the DOC for class 5 felony drug offenses.
- The remaining 1,116 to 1,190 offenders (77 - 82 percent) will be sentenced to probation, including 162 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 felonies will increase state cash fund revenue in the Judicial Department by about \$123,877 in FY 2015-16, \$282,429 in FY 2016-17, and \$325,954 in FY 2017-18.

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 1,330 cases in FY 2015-16 and 1,450 cases per year thereafter.

<b>Table 1. Revenue Change under HB 14-1036</b>				
<b>Fee</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Increase Victim Assistance Fee - \$78 to \$163	-	\$23,715	\$39,525	\$47,430
Denver Cases Paying Victim Assistance Fee - \$163		7,702	12,837	15,404
<b>Subtotal</b>		<b>\$31,417</b>	<b>\$52,362</b>	<b>\$62,834</b>
Increase Docket Fee - \$21 to \$35	-	\$3,906	\$6,510	\$7,812
Denver Cases Paying Docket Fee - \$35		1,654	2,757	3,308
<b>Subtotal</b>		<b>\$5,560</b>	<b>\$9,267</b>	<b>\$11,120</b>
Probation Supervision Fee	-	<b>\$86,900</b>	<b>\$220,800</b>	<b>\$252,000</b>
Criminal fine penalty (class 4 felony)	-	increase	increase	increase
<b>Total</b>	-	<b>\$123,877</b>	<b>\$282,429</b>	<b>\$325,954</b>

**Fine and fee revenue increases.** By increasing the penalty for certain DUI-related offenses from an unclassified misdemeanor to felonies, 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, and the fine penalty for a class 5 felony is \$1,000 to \$100,000. 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 \$31,417 in FY 2015-16, \$52,362 in FY 2016-17, and \$62,834 in FY 2017-18. 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 1,240 offenders in state courts will pay the increased fee amount. Additionally, 210 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 by an estimated \$5,560 in FY 2015-16, \$9,267 in FY 2016-17, and \$11,120 in FY 2017-18, 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 1,240 offenders in state courts will pay an increased fee of \$14, and that 210 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, at least 162 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 (for 162 offenders), rather than to the City and County of Denver. Assuming each offender serves two years of probation, probation supervision fee revenue will increase by an estimated \$115,500 in FY 2015-16, \$252,000 in FY 2016-17, and \$252,000 in FY 2017-18.

**State Expenditures**

Changing the crime classification for certain DUI-related offenses from misdemeanors to felonies will increase state expenditures in the Judicial Department and in the Office of the State Public Defender by *at least* \$1,697,740 and 19.8 FTE in FY 2015-16, \$1,783,690 and 22.5 FTE in FY 2016-17, and \$1,783,690 and 22.5 FTE in FY 2017-18. 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* \$5,585,814 in FY 2016-17 and *at least* \$9,847,504 in FY 2017-18. 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 felonies and results in 1,610 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 2015-16, the Judicial Department will be required to add new staff at the district court level to accommodate the increased workload described above. This requires 2.0 FTE magistrates, 2.0 FTE division clerks, 2.0 FTE law clerks, and 2.0 FTE court reporters. For FY 2015-16, the number of FTE have been prorated to 7.3 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.

<b>Table 2. Judicial Department - Trial Courts - Expenditures Under HB 14-1036</b>				
<b>Cost Components</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Personal Services	-	\$487,044	\$584,453	\$584,453
FTE	-	7.3 FTE	8.0 FTE	8.0 FTE
Operating and Capital Outlay Costs	-	146,968	17,100	17,100
Centrally Appropriated Costs*	-	98,961	108,710	108,710
<b>Total</b>	-	<b>\$732,973</b>	<b>\$710,263</b>	<b>\$710,263</b>

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

**Judicial Department — Probation Division — Offender Supervision.** Probation staff will be required to accommodate the approximate 162 offenders that will be served by the Judicial Department instead of the City and County of Denver. Beginning in FY 2015-16, increased FTE requirements for the Judicial Department will be 3.0 FTE probation officers, 1.0 FTE support staff, and 0.5 FTE probation supervisor. It is assumed that offenders will serve two years on probation. Costs in the first year have been prorated to reflect the bill's effective date and the General Fund paydate shift.

<b>Table 3. Judicial Department - Offender Supervision - Expenditures Under HB 14-1036</b>				
<b>Cost Component</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Personal Services	-	\$227,358	\$272,829	\$272,829
FTE	-	4.0 FTE	4.5 FTE	4.5 FTE
Operating and Capital Outlay Costs	-	22,612	4,275	4,275
Centrally Appropriated Costs**	-	50,457	56,254	56,254
<b>Total</b>	-	<b>\$300,427</b>	<b>\$333,358</b>	<b>\$333,358</b>

\*\*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, 725 convicted offenders will require a full PSI report at initial sentencing. In addition, 725 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 1,450 convicted offenders are initially sentenced to probation (1,116 persons), and based on the current probation revocation rate of about 20 percent, updated PSI reports will be required for 223 offenders at re-sentencing (1,116\*.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 2015-16, this requires an increase of at least 6.8 FTE probation officers, 1.7 FTE support staff, and 1.0 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 paydate shift. Table 4 shows the estimated cost for PSI reports under the bill.

<b>Table 4. Judicial Department - PSI Reports - Expenditures Under HB 14-1036</b>				
<b>Cost Component</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Personal Services	-	\$482,066	\$578,479	\$578,479
FTE	-	8.0 FTE	9.5 FTE	9.5 FTE
Operating and Capital Outlay Costs	-	45,224	9,025	9,025
Centrally Appropriated Costs*	-	103,521	118,976	118,976
<b>Subtotal</b>	-	<b>\$630,811</b>	<b>\$706,480</b>	<b>\$706,480</b>

\*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 0.5 additional FTE which includes 0.3 FTE deputy state public defender, 0.1 FTE investigator, and 0.1 FTE administrative support assistant. Costs are displayed in Table 5.

<b>Cost Components</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Personal Services	-	\$22,412	\$26,894	\$26,894
FTE	-	0.5 FTE	0.5 FTE	0.5 FTE
Operating and Capital Outlay Costs	-	5,383	744	744
Centrally Appropriated Costs*	-	5,734	5,951	5,951
<b>Total</b>	-	<b>\$33,529</b>	<b>\$33,589</b>	<b>\$33,589</b>

\*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 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 1,450 convicted DUI felony offenders per year (260 to 334 offenders) will be sentenced to the DOC. Between 88 and 114 of these offenders will be convicted of a class 4 felony, and between 172 and 220 offenders will be convicted of a class 5 felony. Class 4 felons will serve approximately 28.1 months, which is the average length of stay in the DOC for class 4 felony drug offenses, and class 5 felons will serve approximately 19.7 months, which is the average length of stay in the DOC for class 5 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 260 to 334 additional offenders. The first DOC impact occurs in FY 2016-17 due to the bill's effective date and the length of the adjudication process, which is assumed to be one year.

<b>Fiscal Year</b>	<b>Inmate Bed Impact</b>	<b>Construction Cost</b>	<b>Operating Cost</b>	<b>Total Cost</b>
FY 2014-15	0.0	\$0	\$0	\$0
FY 2015-16	0.0	\$0	\$0	\$0
FY 2016-17	260 - 334	\$0	\$5,585,814 - 7,175,623	\$5,585,814 - 7,175,623
FY 2017-18	458 - 589	\$0	\$9,847,504 - 12,657,598	\$9,847,504 - 12,657,598
FY 2018-19	488 - 628	\$0	\$10,493,453 - 13,494,396	\$10,493,453 - 13,494,396
FY 2019-20	488 - 628	\$0	\$10,493,453 - 13,494,396	\$10,493,453 - 13,494,396
<b>Total</b>		\$0	<b>\$36,420,223 - 46,822,012</b>	<b>\$36,420,223 - 46,822,012</b>

**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.

<b>Cost Components</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Employee Insurance	-	\$145,305	\$164,727	\$164,727
Supplemental Employee Retirement	-	113,368	125,164	125,164
<b>TOTAL</b>	-	<b>\$258,673</b>	<b>\$289,891</b>	<b>\$289,891</b>

\*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 \$107,690 in FY 2015-16, \$241,590 in FY 2016-17, and \$272,790 in FY 2017-18. 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 210 offenders in the City and County of Denver will be reduced by about \$4,410 each year (210\*\$21).

Next, an estimated 162 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 162 offenders, this results in a reduction in probation supervision fee revenue to the City and County of Denver of at least \$86,900 in FY 2015-16, \$220,800 in FY 2016-17, and \$252,000 in FY 2017-18. 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 210 offenders, revenue will decrease by about \$16,380 each year.

**Effective Date**

The bill takes effect and applies to offenses committed on or after July 1, 2015.

**State Appropriations**

For the Department of Corrections, the bill requires the five-year appropriation 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