



**Aggravated driving with a revoked license.** The bill reduces the penalty for this offense from a class 6 felony to a class 1 misdemeanor, but requires a sentencing court to ensure that the offender spends a minimum of 60 days in county jail. The bill also repeals provisions for this offense when it is committed with a DUI, *DUI per se*, or DWAI as part of the same criminal episode.

**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. Due to a lack of data about the timing of repeat offenses, the number of out-of-state convictions and cases involving both a charge of DUI and aggravated driving with a revoked license, and information about the recidivism rate and timing of offenses following use of an interlock device, the fiscal note presents a range of costs following two different sets of assumptions.

**Low range of costs.** The low range of costs in the fiscal note is based on a partial survey of actual data collected by the Colorado District Attorneys' Council. Cost are calculated using the following assumptions:

- all DUI cases that meet the criteria of the bill (about 306) 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;
- a total of 211 people per year are classified as group 1 cases;
- a total of 95 people per year are classified as group 2 cases;
- 25 percent of group 1 cases will be sentenced to prison and will serve an average length of stay of 30.0 months;
- 50 percent of group 2 cases will have prior felonies and be sentenced to prison and will serve an average length of stay of 45.6 months; and
- the Office of the State Public Defender will represent 70 percent of cases.

**High range of costs.** The high range of costs in the fiscal note is based on extrapolating self-reported data (in the Division of Behavioral Health in the Department of Human Services) among persons convicted of a DUI. Costs are calculated using the following assumptions:

- all DUI cases that meet the criteria of the bill (about 2,834) 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;
- 7.25 percent of all cases each year have three or more DUI and, as such, are classified as group 1 cases (1,749 people);
- 4.5 percent of cases each year meet the criteria of the narrower time frames and more serious charges and are classified as group 2 cases (1,085 cases);

- 5 percent of group 1 cases will be sentenced to prison and will serve an average length of stay of 24.0 months;
- 15 percent of group 2 cases will be sentenced to prison and will serve an average length of stay of 30.0 months; and
- the Office of the State Public Defender will represent 70 percent of cases.

**State Revenue**

Tables 1 and 2 show the changes in revenue and are 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. Table 1 revenue calculations are based on the assumptions on the low end of the range or a total of 306 cases. Table 2 revenue calculations are based on the assumptions on the high end of the range or a total of 2,834 cases.

<b>Table 1. Revenue Change under HB 15-1043 (Low End of the Range)</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	-	\$1,927	\$3,389	\$4,149
<b>Subtotal</b>		<b>\$2,991</b>	<b>\$5,235</b>	<b>\$6,399</b>
Increase Docket Fee - \$14 (from \$21 to \$35) Denver Cases Paying Docket Fee - \$35	-	\$318	\$559	\$683
<b>Subtotal</b>		<b>\$546</b>	<b>\$955</b>	<b>\$1,165</b>
Probation Supervision Fee	-	<b>\$15,950</b>	<b>\$34,800</b>	<b>\$36,250</b>
Criminal fine penalty (class 4 felony)	-	potential increase	potential increase	potential increase
<b>Total</b>	-	<b>\$19,487</b>	<b>\$40,990</b>	<b>\$43,814</b>

<b>Table 2. Revenue Change under HB 15-1043 (High End of the Range)</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	-	\$17,885	\$31,431	\$38,474
<b>Subtotal</b>		<b>\$27,421</b>	<b>\$48,204</b>	<b>\$59,012</b>

<b>Table 2. Revenue Change under HB 15-1043 (High End of the Range) (Cont.)</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 Docket Fee - \$14 (from \$21 to \$35)	-	\$2,945	\$5,176	\$6,336
Denver Cases Paying Docket Fee - \$35		2,048	3,602	4,411
<b>Subtotal</b>		<b>\$4,993</b>	<b>\$8,778</b>	<b>\$10,747</b>
Probation Supervision Fee	-	<b>\$151,250</b>	<b>\$330,000</b>	<b>\$343,750</b>
Criminal fine penalty (class 4 felony)	-	potential increase	potential increase	potential increase
<b>Total</b>	-	<b>\$183,664</b>	<b>\$386,982</b>	<b>\$413,509</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. 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. In Table 1, a total of 275 offenders in state courts will pay the increased fee amount. Additionally, as a result of transferring to district court, 31 offenders who are currently convicted in the City and County of Denver will pay the entire \$163 fee to the state. In Table 2, a total of 2,550 offenders in state courts will pay the increased fee amount. Additionally, 284 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 is \$21 versus the \$35 fee charged in district courts. Table 1 assumes that 275 offenders in state courts will pay an increased fee of \$14, and that 31 offenders who are currently convicted in the City and County of Denver will pay the full \$35 to state courts. Table 2 assumes that 2,550 offenders in state courts will pay an increased fee of \$14, and that 284 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. Table 1 assumes 29 offenders will pay this revenue to the state and Table 2 assumes 275 offenders will pay this revenue to the state.

**TABOR Impact**

This bill increases state revenue from fines, which will increase the amount of revenue required to be refunded under TABOR.

**State Expenditures**

**Overall, this bill will increase state expenditures by between \$282,315 and 2.6 FTE and \$2,387,121 and 22.5 FTE in FY 2015-16, by between \$2,486,789 and 3.1 FTE and \$7,902,874 and 27.0 FTE in FY 2016-17, and by between \$4,693,579 and 3.1 FTE and \$13,419,849 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 assuming the low end of the range are shown in Table 3 and costs assuming the high end of the range in Table 4. A discussion of the cost components for the Judicial Department and Office of the State Public Defender follows. Costs for the Department of Corrections are shown in Tables 5 and 6. It should be noted that these costs are based on preliminary assumptions from incomplete data. The fiscal note assumes that all agencies affected by HB15-1043 will be required to make adjustments through the annual budget process.

<b>Table 3. Expenditures under HB 15-1043 (Low End of the Range)</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>\$235,210</u></b>	<b><u>\$229,933</u></b>	<b><u>\$229,933</u></b>
Personal Services	\$157,855	\$188,834	\$188,834
FTE	2.1	2.5	2.5
Operating Expenses and Capital Outlay Costs	48,162	4,750	4,750
Centrally Appropriated Costs*	29,193	36,349	36,349
<b>OFFICE OF THE STATE PUBLIC DEFENDER</b>	<b><u>\$47,105</u></b>	<b><u>\$50,066</u></b>	<b><u>\$50,066</u></b>
Personal Services	26,894	33,101	33,101
FTE	0.5	0.6	0.6
Operating Expenses and Capital Outlay Costs	5,178	570	570
Centrally Appropriated Costs*	14,843	16,395	16,395
<b>Department of Corrections (See Table 5)</b>	<b>\$0</b>	<b>\$2,206,790</b>	<b>\$4,413,580</b>
<b>TOTAL</b>	<b>\$282,315</b>	<b>\$2,486,789</b>	<b>\$4,693,579</b>
<b>TOTAL FTE</b>	<b>2.6 FTE</b>	<b>3.1 FTE</b>	<b>3.1 FTE</b>

\* Centrally appropriated costs are not included in the bill's appropriation.

<b>Table 4. Expenditures under HB 15-1043 (High End of the Range)</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 (See Table 6)</b>	<b>\$0</b>	<b>\$5,516,975</b>	<b>\$11,033,950</b>
<b>TOTAL</b>	<b><u>\$2,387,121</u></b>	<b><u>\$7,902,874</u></b>	<b><u>\$13,419,849</u></b>
<b>TOTAL FTE</b>	<b><u>22.5 FTE</u></b>	<b><u>27.0 FTE</u></b>	<b><u>27.0 FTE</u></b>

**Judicial Department — Trial courts.** The bill changes the crime classification for certain DUI-related offenses from misdemeanors to felonies and results in between 306 and 2,834 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 new magistrate, 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 29 - 275 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.

**Office of the State Public Defender (OSPD).** 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. Table 5 shows prison costs for cases at the low end of the range. Table 6 shows prison costs for cases at the high end of the range.

<b>Table 5. Five-Year Fiscal Impact On Correctional Facilities Low End of the Range</b>				
<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	100.0	\$0	\$2,206,790	\$2,206,790
FY 2017-18	200.0	\$0	\$4,413,580	\$4,413,580
FY 2018-19	273.5	\$0	\$6,035,571	\$6,035,571
FY 2019-20	311.1	\$0	\$6,865,324	\$6,865,324
<b>Total</b>			<b>\$19,521,264</b>	<b>\$19,521,264</b>

<b>Table 6. Five-Year Fiscal Impact On Correctional Facilities High End of the Range</b>				
<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	250.0	\$0	\$5,516,975	\$5,516,975
FY 2017-18	500.0	\$0	\$11,033,950	\$11,033,950
FY 2018-19	581.5	\$0	\$12,832,484	\$12,832,484
FY 2019-20	581.5	\$0	\$12,832,484	\$12,832,484
<b>Total</b>			<b>\$42,215,893</b>	<b>\$42,215,893</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. It is not known how many of the existing cases this bill applies to or already receive a sentence to jail and therefore, the increase in local jail costs has not been estimated. 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. As of this writing, no information about the gender or minority status of victims is available.

### **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, assuming the high end of the range, the bill requires the following new appropriations:

- \$1,732,634 General Fund to the Judicial Department and an allocation of 17.7 FTE;
- \$297,282 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 \$42,215,893 to the Department of Corrections as shown in Table 6, above.

**State and Local Government Contacts**

Corrections  
Human Services  
Municipalities  
Sheriffs

Counties  
Judicial  
Public Safety

District Attorneys  
Law  
Revenue