

Colorado Legislative Council Staff
STATE
FISCAL IMPACT

Drafting Number: LLS 02-0170	Date: November 26, 2001
Prime Sponsor(s): Sen. Gordon	Bill Status: Interim Committee on Criminal Sentencing
Rep. Hefley	Fiscal Analyst: Geoff Barsch (303-866-4102)

TITLE: CONCERNING PENALTIES FOR PERSONS CONVICTED OF CRIMINAL VIOLATIONS.

Fiscal Impact Summary	FY 2002/2003	FY 2003/2004
State Revenues		
Drug Offender Surcharge Fund	(\$673,516)	(\$715,274)
Drug Offender Treatment Fund	\$952,494	\$1,011,548
Cash Funds - Courts	\$15,499	\$16,460
State Expenditures		
General Fund	\$0	\$0
FTE Position Change	0.0 FTE	0.0 FTE
TABOR refund from General Fund*		\$309,200
Effective Date: July 1, 2002		
Appropriation Summary for FY 2001/2002: No appropriation is required.		
Local Government Impact: See Local Government Impact section		

* Under current law, the state is required to refund 105 percent of the amount estimated to be refunded by the six-tier sales tax refund mechanism.

Note: The official Legislative Council staff revenue forecast for September 2001 indicates a TABOR revenue surplus for the next several years. However, revenue tracking since the September forecast indicates a potential for a revision downward of the surplus amount. If this occurs, the fiscal note will be revised to reflect the most recent revenue forecast.

Summary of Legislation

This bill makes several changes to the offense level of illegal drug use or possession. Changes include reducing the penalty for **use** of a schedule I or II controlled substance and creating the new penalty of **possession** of one gram or less of a controlled substance. The bill reduces:

- use of a schedule I or II controlled substance from a class 5 felony to a class 6 felony;

Bill A

- possession of a schedule I controlled substance from a class 3 felony to a class 6 felony if the amount is one gram or less;
- possession of a schedule II or III controlled substance from a class 4 felony to a class 6 felony if the amount is one gram or less;
- possession of a schedule IV controlled substance from a class 5 felony to a class 6 felony if the amount is one gram or less; and
- a second or subsequent offense of possession of a schedule I through IV controlled substance to a class 4 felony when the amount is one gram or less.

The bill also increases the Drug Offender Surcharge for all classes of drug offenses, creates the Drug Offender Treatment Fund, and directs 25 percent of Drug Offender Surcharge revenue to the Drug Offender Treatment Fund. The bill creates the State Drug Offender Treatment Board and specifies board membership. The board is authorized to allocate moneys to local Drug Offender Treatment Boards, consisting of a district attorney, a public defender, and a probation officer, for distribution to drug treatment providers in the judicial districts.

The bill allows an offender who has two previous felony convictions and who is convicted of possession of one gram or less of a schedule I through IV controlled substance to be placed on probation. The bill extends the court's power to commit a probationer to county jail during the probation period from 90 days to a cumulative period of 180 days.

The bill requires all portions of the act, except the provision implementing the 180-day extension, to return to existing language if \$2.2 million is not appropriated to the drug offender treatment fund in the fiscal year beginning in 2004 or any fiscal year thereafter.

State Revenues

The bill creates the Drug Offender Treatment Fund, increases drug offender surcharges on felonies, misdemeanors, and marijuana petty offenses, and directs 25 percent of the revenue collected to the Fund. The surcharge increases are shown in Table 1.

Table 1. Drug Offender Surcharge Increases			
Penalty	Current Fine	Proposed Fine	Difference
Class 2 Felony	\$4,500	\$5,000	\$500
Class 3 Felony	3,000	4,000	1,000

Bill A

Class 4 Felony	1,500	2,000	500
Class 5 Felony	1,250	1,500	250
Class 6 Felony	750	1,000	250
Class 1 Misdemeanor	600	750	150
Class 2 Misdemeanor	450	600	150
Class 3 Misdemeanor	225	300	75
Class 2 Petty Offense (marihuana)	100	150	50
Average	\$1,375	\$1,700	\$325

While revenue collections will increase as a result of the higher surcharge amounts, it is estimated that 40 percent of the increased surcharge assessments will be collected. The Judicial Department estimates that FY 2001-02 Drug Offender Surcharge revenue will be approximately \$3.5 million. The bill proposes to increase the assessment of Drug Offender Surcharge fines by 24 percent, or \$840,000. If 40 percent of the increased assessment is actually collected, revenue will increase by \$336,000. However, when taking into account the reduced penalties for drug possession of one gram or less, overall revenue is estimated to increase by \$310,000. Of the total, \$201,500 will be deposited to the Drug Offender Surcharge Fund, \$77,500 will be deposited to the Drug Offender Treatment Fund, and the remainder will be distributed to the court clerks, investigating agencies, and county sheriffs.

Because 25 percent of revenue collected is directed to the Drug Offender Treatment Fund, the bill will reduce the overall revenue directed to the Drug Offender Surcharge Fund. Of the total revenue collected, \$2.48 million will be deposited to the Drug Offender Surcharge Fund, \$0.95 million will be deposited to the Drug Offender Treatment Fund, and the remainder will be distributed to the court clerks, investigating agencies, and county sheriffs. The result is an estimated reduction to the Drug Offender Surcharge Fund of \$673,516.

State Expenditures

This bill will result in a General Fund savings of \$2,364,700 beginning in FY 2004-05 as a result of shorter prison sentences for offenders convicted of possessing one gram or less of an illegal drug. The fiscal note assumes the following:

- The lower penalty will not be offered to those offenders charged with a crime more serious than possession. According to the 1999 Colorado District Attorney's Council database, 2,026 offenders were convicted of possession of a schedule I through IV controlled substance. Of these, 918 were originally charged with a more serious crime, while possession was the most serious charge for 1,108 offenders.

Bill A

- Offenders convicted of the new crime of possessing one gram or less of an illegal drug will be sentenced to prison at the same rate as current possession offenders. Of the 1,108 offenders noted above, 299 were sentenced to the Department of Corrections.
- Approximately one-third of offenders convicted of drug possession will be arrested with one gram or less. Based on the Department of Public Safety, Division of Criminal Justice's 1998 sample of cases from ten judicial districts, 30.9 percent of drug cases involved possession of one gram or less.

Table 2 below shows the number of offenders estimated to be impacted by the lower class 6 felony sentence of possessing one gram or less of an illegal controlled substance. An estimated 93 offenders will be sentenced to the Department of Corrections and serve an average sentence length of 12 months. Beginning in FY 2004-05, the offenders will complete their sentences, resulting in an operating cost reduction compared to current sentences.

Table 2. Offenders Sentenced to DOC for Possessing One Gram or Less of an Illegal Drug					
Controlled Substance	Current Felony Class	Proposed Felony Class	Offenders Convicted of Possession	Offenders Sentenced to DOC	Offenders Sentenced Under Bill A (30.9%)
Schedule I	Class 3	Class 6	106	20	6
Schedule II, III	Class 4	Class 6	748	206	64
Schedule IV	Class 5	Class 6	254	73	23

The lower penalties for use of a schedule I or II controlled substance and for second and subsequent offenses are not anticipated to have a significant impact on the department's operations.

Five-Year Fiscal Impact on Correctional Facilities

Table 3 shows the five-year calculated savings of Criminal Sentencing Interim Committee Bill A. Operating costs are estimated to be \$26,238 per bed. It should be noted that the calculated savings begin in FY 2004-05. This estimate accounts for the estimated time for criminal filing, trial, disposition, and sentencing, followed by the estimated 12 months prison sentence of the new penalty for possessing one gram or less of an illegal drug.

Table 3. Five-Year Impact of Criminal Sentencing Interim Committee Bill A				
Fiscal Year	ADA Impact	Construction Cost	Operating Cost	Total Cost
FY 2002-03	0.0	\$0	\$0	\$0
FY 2003-04	0.0	0	0	0

Bill A

FY 2004-05	(90.1)	0	(2,364,700)	(2,364,700)
FY 2005-06	(154.8)	0	(4,061,424)	(4,061,424)
FY 2006-07	(160.3)	0	(4,207,045)	(4,207,045)
TOTAL		\$0	(\$10,633,168)	(\$10,633,168)

Local Government Impact

County jails will be impacted by the increased length of stay allowed for offenders who violate terms of their probation under the bill. Current law limits to 90 days the cumulative amount of time a probationer may be sentenced to a county jail. The bill expands the limit to 180 days. While the daily cost to house an offender in a county jail facility varies, the FY 2000-01 rate the state pays local jails for holding state inmates is \$49.40 per offender per day. The statewide impact of the increased limit is not estimated at this time.

State Appropriations

No appropriation is required. The bill stipulates that its provisions will be repealed July 1, 2004 if the General Assembly does not appropriate \$2.2 million to the Drug Offender Treatment Fund for FY 2004-05.

Departments Contacted

Corrections Human Services Judicial