



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

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Prime Sponsors: Sen. Priola Bill Status: Senate SVMA
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Bill Topic: PENALTY FOR DRIVING UNDER RESTRAINT

- Summary of Fiscal Impact: State Revenue, State Expenditure (minimal), State Transfer, TABOR Refund, Local Government, Statutory Public Entity

This bill increases various penalties for driving with a license that is restricted due to an alcohol-related offense. Beginning in FY 2018-19, it increases state and local revenue and expenditures and workload on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This fiscal note reflects the introduced bill.

Table 1 State Fiscal Impacts Under SB 18-257

Table with 4 columns: Category, Sub-category, FY 2018-19, FY 2019-20. Rows include Revenue (Cash Funds), Expenditures, Transfers, and TABOR Refund (General Fund).

## **Summary of Legislation**

Under current law, anyone who drives a motor vehicle or off-highway vehicle with a license that is restricted due to a DUI, driving while ability impaired (DWAI), underage drinking and driving (UDD), or other alcohol-related offense, is guilty of a misdemeanor. The punishment for the first offense for driving with a license restricted for an alcohol-related offense is a jail sentence of at least 30 days and up to a year, a fine between \$500 and \$1,000, or both. The punishment for a second or subsequent offense is a jail sentence of at least 90 days and up to 2 years, a fine between \$500 and \$2,000, or both.

This bill increases the penalty for the first of offense of driving with a license that is restricted due to an alcohol-related offense to a minimum jail sentence of 60 days and a fine of \$1,000 and 2,000 or both. The bill increases the penalty for second or subsequent offenses to a jail sentence of at least 90 days and up to 2 years, a fine between \$2,000 and \$4,000, or both.

Additionally, if someone drives negligently with a license that is under restraint due to an alcohol-related offense, and is the proximate cause of death to another person, the penalty for this offense is increased from a misdemeanor to a class 5 felony.

## **Comparable Crime**

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. Under current law, it is a misdemeanor to drive with a license restricted for an alcohol-related offense. Between January 1, 2015, to January 31, 2017, 3,626 drivers were convicted of driving with license restricted for an alcohol-related offense. Of this number, 2,855 were Caucasian, 316 were Hispanic, 301 were African American, 83 were American Indian, 27 were Asian, and there were 44 for which race data were unavailable; 2,912 were male, 712 were female, and there were 2 for which gender data were unavailable. It is unknown how many people drove negligently with a license under restraint and were the proximate cause of death to another person.

## **State Revenue**

This bill is anticipated to increase state revenue by up to \$23,913 in FY 2018-19 and \$34,927 in FY 2019-20, as described below.

**Data and assumptions.** Revenue estimates for FY 2018-19 are prorated to account for the September 1, 2018, effective date of the bill. Based on data from previous convictions, it is estimated that 119 offenders of the existing misdemeanor will receive the minimum penalty, and 5 offenders will receive the maximum penalty per year.

**Criminal fines.** This bill will increase fine revenue by up to \$28,913 in FY 2018-19 and \$39,947 in FY 2019-20, credited to the Fines Collection Cash Fund in the Judicial Department. These impacts are described below.

*Misdemeanor revenue.* Increasing the misdemeanor penalty for driving with a license restrained for an alcohol-related offense will increase state cash fund revenue by \$23,913 in FY 2018-19 and \$34,927 in FY 2019-20. The fine for this penalty is increased from \$1,000 to

\$2,000 for the first offense, and from \$2,000 to \$4,000 for a second or subsequent offense. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. The estimated revenue impacts from increasing the misdemeanor penalty in this bill are outlined in Table 2 below.

**Table 2  
 Fine Impact Under SB 18-257**

<b>Fiscal Year</b>	<b>Driving with a Restrained License</b>	<b>Fine Assessed</b>	<b>Change in Fine</b>	<b>Cases Subject to Penalty</b>	<b>Estimated Total Fine Collected*</b>
FY 2018-19	Minimum Penalty	\$1,000	\$500	99	\$21,236
	Maximum Penalty	\$2,000	\$1,500	4	\$2,677
<b>FY 2018-19 Total</b>					<b>\$23,913</b>
FY 2019-20	Minimum Penalty	\$1,000	\$500	119	\$25,585
	Maximum Penalty	\$2,000	\$1,500	5	\$3,225
	FY 2018-19 Fine Revenue**				\$6,117
<b>FY 2019-20 Total</b>					<b>\$34,927</b>

\* It is assumed that 43 percent of each year's fine revenue will be collected by June 30 of each fiscal year.

\*\* It is assumed an additional 11 percent of FY 2018-19 fines will be collected in FY 2019-20 .

*Felony revenue.* The 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 fine penalty for a class 5 felony offense is \$1,000 to \$100,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, it is assumed that additional filings under this bill will be minimal, and that this penalty is already charged as manslaughter, criminally negligent homicide, or vehicular homicide under current law, which all carry a felony penalty.

**Court and administrative fees.** The bill will also increase state fee revenue credited to the General Fund and various cash funds. Fees are imposed for a variety of court-related costs, which vary based on the offense but may include probation supervision, drug or sex offender surcharges, victim compensation, and late fees, among others. Some fee revenue is shared with local governments; refer to the Local Government Impact section for additional information.

**TABOR Refund**

This bill increases state revenue from fines, which will increase the amount of money required to be refunded under TABOR for FY 2018-19 and FY 2019-20. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount. State revenue subject to TABOR is not estimated for years beyond FY 2019-20.

## **State Expenditures**

Beginning in FY 2018-19, this bill increases workload and state expenditures in the Judicial Department and agencies that provide representation to indigent persons, including the Office of the State Public Defender and the Office of the Alternate Defense Counsel. It may also increase General Fund expenditures in the Department of Corrections, as discussed below.

**Judicial Department.** Beginning in FY 2018-19, increasing the misdemeanor penalty will increase workload in the trial courts, as the increased penalty makes it more likely that a defendant will take their case to trial. Additionally, creating a new class 5 felony penalty may increase the number of filings in the trial courts. However, it is assumed that offenses for driving negligently and being the proximate cause of death to someone is already being filed under current law as a more serious offense. It is unknown how many of these cases involved someone driving with a restrained license. The net impact to court workload for these penalties can be accomplished within existing appropriations.

**Agencies providing representation to indigent persons.** Workload and costs for the Office of the State Public Defender and the Office of the Alternate Defense Counsel could increase under the bill if more cases go to trial than under current law. To the extent this occurs, this analysis assumes the affected offices will request an increase in appropriations through the annual budget process.

**Department of Corrections.** To the extent that this bill increases the number of persons sentenced to prison, costs will increase. If the bill lowers the penalty from what is currently being charged, cost may decrease. The fiscal note assumes the Department of Corrections will request adjustments to appropriations through the annual budget process, if needed.

## **Local Government**

Overall, this bill is expected to increase local government revenue, workload, and costs as described below. The exact impact to a particular local government will vary depending on the number of offenses committed within its jurisdiction.

**District attorneys.** The bill increases workload and costs for district attorneys if more cases go to trial. Conversely, if some cases are charged as a class 5 felony rather than a more serious charge, workload will decrease.

**County jails.** Under current law, a court may sentence an offender to jail for a misdemeanor offense for a period of between 3 months and 2 years. This bill is expected to increase jail sentences for certain offenders. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. Estimated costs to house an offender in a county jail vary from \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.39 to house state inmates.

**Denver County Court.** The bill has the following impacts on the Denver County Court.

*Revenue.* For misdemeanors committed in Denver County, criminal fine and court fee revenue is collected by Denver County Court, which may increase under this bill. Because the court has discretion to impose a term of incarceration, a fine, or both, the precise impact to Denver County has not been estimated. Please refer to the State Revenue section above for information about fine penalty ranges and court fees.

*Expenditures.* The bill results in an increase in workload for the Denver County Court, managed and funded by the City and County of Denver if more cases go to trial.

**Effective Date**

The bill takes effect September 1, 2018, if no referendum petition is filed. The act applies to offenses committed on or after the effective date.

**State and Local Government Contacts**

Counties  
Judicial  
Revenue

District Attorneys  
Law  
Transportation

Information Technology  
Public Safety