



**Colorado
Legislative
Council
Staff**

HB17-1288

FISCAL NOTE

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 17-0083	Date: April 11, 2017
Prime Sponsor(s): Rep. Saine; Foote	Bill Status: House Judiciary
Sen. Cooke; Court	Fiscal Analyst: Kerry White (303-866-3469)

BILL TOPIC: PENALTIES FOR FELONY DUI OFFENDERS

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue		
State Expenditures*	(\$46,863)	(\$46,863)
General Fund	(36,785)	(36,785)
Centrally Appropriated Costs	(10,078)	(10,078)
FTE Position Change	(0.6 FTE)	(0.6 FTE)
Appropriation Required: (\$36,785) - Judicial Department (FY 2017-18).		
Future Year Impacts: Ongoing state expenditure decrease.		

* See the State Expenditures section for additional information about potential impacts for the Colorado Department of Transportation.

Summary of Legislation

This bill establishes new sentencing requirements for the offenses of felony DUI, DUI *per se*, or DWAI when an offender is sentenced to probation. Under the bill, the court is required to impose a sentence of between 90 and 180 days in county jail. During the mandatory 90-day period of imprisonment, the offender is not eligible for reductions in his or her sentence, except that he or she may receive credit for time served in custody prior to conviction. In certain circumstances, the offender is required to serve between 120 days and two years in county jail and during the required minimum 120 days, sentencing reductions are also not permitted except to credit time served prior to conviction. A probation sentence must also require the offender to complete between 48 and 120 hours of useful public service, which may not be suspended.

Background

House Bill 15-1043 increased the penalty from a misdemeanor to a class 4 felony after three or more prior convictions of a DUI, DUI *per se*, or DWAI; vehicular homicide; vehicular assault; or any combination thereof. Convictions from other U.S. states and territories are deemed to apply if they would constitute the same offense in Colorado. The court is required to consider whether all reasonable and appropriate alternative sentences have been exhausted and to determine that incarceration is the most suitable option before imposing a term in the Department of Corrections (DOC). If sentenced to a term of incarceration, the penalty for a class 4 felony is a sentence of between two and six years.

The felony DUI law applies to offenses committed on or after August 5, 2015. Between the law's effective date and December 31, 2016, there have been 635 convictions of felony DUI statewide. Of this number, 490 were sentenced to jail and 170 were also sentenced to DOC. The gender composition of these offenders includes 616 males and 19 females; the racial composition is 594 Caucasians, 22 African Americans, 16 Hispanics, and 3 Asians.

Assumptions

The following assumptions were applied to the fiscal note.

State revenue. The fiscal note assumes that supervision fees are assessed at sentencing for the length of probation and because the jail sentence is a condition of probation, probation supervision fees will not be reduced by the amount of time an offender is incarcerated. In addition, based on data from the Judicial Department, all offenders have had some useful public service assignment; only three offenders to date have received less than the 48 hours required by House Bill 17-1288. As such, the bill is not anticipated to affect useful public service fees imposed by the court. The fiscal note assumes that there is no impact on state revenue under the Judicial Department as a result of the bill.

State expenditures. Based on data from the Judicial Department, in calendar year 2016, 180 offenders received a jail sentence and were credited with an average of 30 days for time served and the average offender spends about two years on probation. The fiscal note assumes that:

- 75 percent of offenders (135) will serve an additional 60 days in jail, reducing probation workload by about 540 hours;
- 20 percent of offenders (36) will serve an additional 90 days in jail, reducing probation workload by about 215 hours;
- 5 percent of offenders (9) will serve the entire probation period in jail, reducing probation workload by about 420 hours;
- offenders with increased jail time will have the period of supervision on probation reduced proportionately; and
- offenders receive approximately two hours of supervision from probation staff per month, which will be avoided while an offender is in jail.

In addition, another 37 offenders received a probation only sentence in calendar year 2016 and received a credit of 30 days toward their sentence. The fiscal note assumes that these individuals will serve an additional 90 days in jail, thus resulting in a reduction of 60 days of probation supervision, per offender (for a total of about 150 hours of probation workload).

State Expenditures

This bill reduces state General Fund expenditures by an estimated \$46,863 and 0.6 FTE per year in the Judicial Department as shown in Table 1.

Table 1. Expenditures Under HB17-1288		
Cost Components	FY 2017-18	FY 2018-19
Personal Services	(\$36,215)	(\$36,215)
FTE	(0.6 FTE)	(0.6 FTE)
Operating Expenses and Capital Outlay Costs	(570)	(570)
Centrally Appropriated Costs*	(10,078)	(10,078)
TOTAL	(\$46,863)	(\$46,863)

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

Probation services division. Based on the assumptions listed above, probation services staff hours are reduced by approximately 1,350 hours per year, equivalent to 0.6 FTE. Operating and centrally appropriated costs are also reduced.

Trial courts and representation of offenders. To the extent that mandatory minimum jail times increase the likelihood of felony DUI cases reaching trial, workload for trial courts and any agencies providing representation to offenders will increase. These impacts are assumed to be minimal and do not require an adjustment in appropriations for any agency of the Judicial Department.

Colorado Department of Transportation. This bill may increase expenditures as a result of any moneys received from the National Highway Traffic Safety Administration and the Federal Highway Administration. The state is out of compliance with federal requirements concerning mandatory minimum sentences for certain DUI offenses, which this bill seeks to correct. If enacted, about \$12 million per year in federal funds may become available to the Colorado Department of Transportation for safety projects in jurisdictions where DUI offenses occur most frequently. These impacts are contingent upon federal agency actions and have not been included in the estimate for House Bill 17-1288.

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 2.

Table 2. Centrally Appropriated Costs Under HB17-1288		
Cost Components	FY 2017-18	FY 2018-19
Employee Insurance (Health, Life, Dental, and Short-term Disability)	(\$5,019)	(\$5,019)
Supplemental Employee Retirement Payments	(3,245)	(3,245)
Indirect Costs	(1,814)	(1,814)
TOTAL	(\$10,078)	(\$10,078)

Local Government Impact

As noted in the assumptions section, this bill increases costs for county jails for about 217 offenders per year. The cost to house an offender in a county jail varies from about \$53 to \$114 per day. It is assumed that the impact of this bill will vary by jurisdiction where convictions occur and the length of the jail term imposed. The precise impact to any individual jurisdiction has not been estimated.

Effective Date

The bill takes effect August 9, 2017, if the General Assembly adjourns on May 10, 2017, as scheduled, and no referendum petition is filed. The bill applies to offenses committed on or after this date.

State Appropriations

For FY 2017-18, the bill requires a reduction in appropriations of \$36,785 General Fund for the Judicial Department and a reduction in FTE allocations of 0.6 FTE.

State and Local Government Contacts

Corrections
Judicial
Sheriffs

Counties
Municipalities

District Attorneys
Public Safety