



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

HB 19-1146

FISCAL NOTE

Drafting Number: LLS 19-0239
Prime Sponsors: Rep. Roberts; McKean

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Bill Status: House Judiciary
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Bill Topic: TANDEM DUI PER SE

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

This bill creates the traffic offense of tandem DUI per se for when a peace officer has evidence to believe that the driver consumed alcohol or drugs, was substantially incapable of operating a motor vehicle safely, and had any measurable amount of a controlled substance other than alcohol in their system at the time of driving. This bill increases state and local revenue, costs, and workload on an ongoing basis.

Appropriation Summary: No appropriation is required.

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

Summary of Legislation

This bill creates the traffic offense of tandem DUI per se which applies when a peace officer has evidence, based on observable impairment, to believe that the driver consumed alcohol or drugs, was substantially incapable of operating a motor vehicle safely, and had any measurable amount of a controlled substance other than alcohol in their system at the time of driving or within four hours of driving. The penalties for tandem DUI per se are the same as for DUI, a misdemeanor offense or a class 4 felony if the violation occurred after three or more prior convictions. Lastly, this bill repeals the 5 nanogram THC threshold for the presumption that a driver is under the influence of marijuana.

Comparable Crime Analysis

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 an existing crime. The following sections outline data on crimes that are comparable to the offense in this bill and discuss assumptions on future rates of criminal convictions under the bill.

Prior conviction data. This bill creates the new offense of tandem DUI per se, a misdemeanor offense or class 4 felony if the violation occurred after three or more prior convictions. To form an estimate on the prevalence of this new crime, the fiscal note analyzed the existing DUI-related offense as a comparable crime. In 2018, 3,439 individuals were convicted and sentenced for this existing offense. Of the persons convicted, 2,602 were male, 835 were female, and 2 did not have a gender identified. Demographically, 2,771 were White, 343 were Hispanic, 219 were African American, 41 were American Indian, 34 were Asian, and 31 were classified as "Other".

Assumptions. This analysis assumes that many of the tandem DUI per se cases could be prosecuted under existing DUI statute; therefore, this bill will not result in additional DUI criminal filings. However, this bill creates a different method of proof which will likely increase convictions. The additional number of convictions has not been estimated, but is expected to be minimal.

Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Revenue

Criminal fines and court fees. By creating a new misdemeanor offense, the bill may increase state revenue from criminal fines and court fees by a minimal amount beginning in FY 2019-20, credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. Individuals may be fined between \$600 and \$1,500 for a misdemeanor DUI offense. Additionally, court fees may be imposed on a case-by-case basis for a variety of court-related costs, such as probation supervision, drug surcharges, or late fees. Because the courts have the discretion of incarceration, imposing a fine, or both, a precise state revenue impact cannot be determined. Criminal fine and court fee revenue is subject to TABOR.

Driver License Reinstatements. To the extent that this bill increases the number of driver license revocations, cash fund revenue to the Department of Revenue will increase for license reinstatements.

State Expenditures

Beginning in FY 2019-20, this bill minimally increases costs and workload in the Judicial Department and agencies that provide representation to indigent persons. Costs and workload in the Department of Revenue, the Department of Corrections, and the Department of Public Safety may also increase.

Judicial Department. This bill potentially increases costs and workload for the trial courts in the Judicial Department to process tandem DUI per se cases using the new burden of proof. To the extent that offenders are sentenced to probation, costs and workload in the Division of Probation will increase. Costs and workload may also increase in the agencies that provide representation to indigent persons, including the Office of the State Public Defender and the Office of Alternate Defense Council. Overall, it is assumed that this workload can be accomplished within existing appropriations. Should a change in funding be required for any agency or division with the Judicial Department, the fiscal note assumes it will be addressed through the annual budget process.

Department of Revenue. The bill may increase the number of driver license revocations. To the extent that DUI convictions increase, an increase in workload for the Department of Revenue to create new forms and letters, administer revocations and subsequent reinstatement of driving privileges. The workload impact is expected to be minimal and can be achieved within existing appropriations.

Department of Corrections. To the extent that this bill increases the number of persons convicted and sentenced to prison for a class 4 felony after three or more prior convictions for DUI, prison costs will increase. However, at this time it is assumed that the likelihood of persons being sentenced to the custody of the DOC is minimal and that any increase in costs will be addressed through the annual budget process, if necessary.

Department of Public Safety. To the extent that this bill increases the number of blood samples sent to the Colorado Bureau of Investigations within the Department of Public Safety, costs and workload will increase to analyze these samples for drugs. The number of additional blood samples has not been estimated, but is expected to be minimal.

TABOR refunds. The bill potentially increases state General Fund obligations for TABOR refunds in FY 2019-20. Under current law and the December 2018 Legislative Council Staff forecast, the bill will correspondingly increase the amount refunded to taxpayers via sales tax refunds on income tax returns for tax year 2020. The state is not expected to collect a TABOR surplus in FY 2020-21.

Local Government

Beginning in FY 2019-20, this bill potentially increases local government revenue, costs, and workload 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 potentially increases costs and workload for district attorneys to prosecute a tandem DUI per se offenses using the new burden of proof. This increase is expected to be minimal.

County jails. Based on the assumptions listed in the Comparable Crime Analysis section, the bill may increase county jail costs. However, because the courts have the discretion of incarceration or imposing a fine, the precise county impact cannot be determined. Under current law, the state reimburses county jails for housing state inmates. Based on a 2018 Joint Budget Committee Staff county jail survey, the average cost to house an offender in a county jail is \$98.83 per day, but varies significantly from \$43.65 to \$350.21 per day depending on the county. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.93.

Denver County Court. The bill may increase revenue, costs and workload for the Denver County Court, which is managed and funded by the City and County of Denver, to try misdemeanor cases under the bill. Probation services in the Denver County Courts may also experience an increase in revenue, costs, and workload revenue to supervise persons convicted under the bill within Denver County.

Effective Date

The bill takes effect September 1, 2019, if no referendum petition is filed, and applies to offenses committed on or after this date.

Departmental Difference

The Department of Revenue estimates that this bill will require \$422,052 and 7.1 FTE beginning in FY 2019-20. This estimate is based on the existing number of DUI conviction cases and assumes a similar number of additional tandem DUI per se cases. The fiscal note does not include these costs because, as noted in the Comparable Crime Assumptions section, these cases can likely already be prosecuted under existing DUI statute and will not result in additional criminal filings. To the extent the bill increases the number of convictions and driver license revocations, it is assumed costs will be addressed through the annual budget process.

State and Local Government Contacts

Counties
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