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REVISED FISCAL NOTE

(replaces fiscal note dated February 11, 2020)

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Prime Sponsors: Sen. Coram; Lee Rep. Catlin; Gray Bill Status: Senate Finance
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Bill Topic: TRAFFIC OFFENSE CLASSIFICATION AND PENALTIES

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

The bill increases traffic fines for certain traffic infractions and offenses and modifies other traffic offenses. The bill impacts state and local revenue and expenditures on an ongoing basis.

Appropriation Summary: The bill requires a net reduction in appropriations of \$28,570 to multiple state agencies. See State Appropriations section.

Fiscal Note Status: The revised fiscal note reflects the introduced bill, as amended by the Senate Transportation and Energy Committee.

Table 1 State Fiscal Impacts Under SB 20-070

Table with 4 columns: Category, Sub-category, FY 2020-21, FY 2021-22. Rows include Revenue (State Highway Fund, Cash Funds, Total), Expenditures (General Fund, Cash Funds, Centrally Appropriated, Total), Total FTE, Transfers, and TABOR Refund (General Fund).

Summary of Legislation

The bill increases penalties and surcharges for traffic offenses. In addition, the bill modifies several penalties for driving under restraint. These changes are discussed below.

Traffic penalties. The bill changes the current allocation formula for traffic penalties. Current law allocates almost all traffic penalty revenue through the Highway Users Tax Fund (HUTF) distribution formula. Under the bill, for traffic penalties of \$30 or less, 50 percent of the penalty is allocated to the county, with the remainder credited to the HUTF. For penalties of more than \$30, but less than \$100, 20 percent of the penalty is allocated to the county in which the violation occurred, with the remainder credited to the HUTF. For penalties over \$100, 100 percent of the penalty is credited to the HUTF. The funding received by counties from traffic infractions and offenses must be used for traffic-related activities. Traffic penalties and surcharges are increased as follows:

- the maximum penalty for an unspecified class A and class B traffic infraction is increased from \$100 to \$200;
- current penalties and surcharges for which no penalty is provided in statute are doubled;
- current penalties of \$15 or less are doubled;
- current penalties that are more than \$15, but less than \$100, are increased by 30 percent;
- current surcharges of \$20 or less are increased by \$4; and
- current surcharges of more than \$20 are increased by \$6.

In addition, the bill reclassifies driving without a valid driver license from a class 2 misdemeanor to class A traffic infraction. Also, the bill reclassifies the first violation of driving without insurance from a class 1 traffic misdemeanor to a class A traffic infraction with a \$500 fine. The court may suspend all or a portion of the fine if the defendant is indigent and there is no reasonable likelihood that the defendant will be able to pay the fine within 180 days.

Traffic surcharges. Under current law, half of all traffic surcharges are distributed to each judicial district's Victim and Witness Assistance and Law Enforcement (VALE) Fund. The bill requires the court administrator in each judicial district to transmit \$2 from each surcharge to a community-based advocacy program chosen by the district's VALE board. The program must be located within the judicial district.

Driving under restraint. In Colorado, persons cannot drive after their driver license has been denied, revoked, or suspended in any state, referred to as driving under restraint. Under current law, persons driving under restraint for any reason other than an alcohol-related offense are guilty of a misdemeanor and must pay a penalty of up to \$500. Upon a second conviction, persons driving under restraint are not eligible to get a driver license for three years after the second offense. This bill repeals the driver license penalty if the driving under restraint was for any reason other than alcohol-related.

In addition, under current law, a person is an habitual offender for driving purposes when the person has three or more convictions of driving under restraint. Habitual offenders' driver licenses are revoked and a driver license cannot be issued for five years. This bill removes the three convictions requirement of driving under restraint from the definition of habitual offender as long as the driving under restraint was not alcohol-related. Therefore, the Department of Revenue (DOR) is not required to revoke a driver license for multiple convictions of driving under restraint.

Background and Data

The following sections provide information on current penalty and surcharge revenue and driver license revocation revenue.

Penalty revenue. Traffic infraction penalties are primarily credited to the HUTF. The HUTF is the primary source of state highway system funding in Colorado. Preliminary, unaudited revenue to the fund totaled \$1.1 billion in FY 2018-19. Of the \$1.1 billion, \$44.4 million in court, DUI, and DWI fines were credited to the HUTF in FY 2018-19 from traffic fines. Of revenue transferred to the HUTF, 65 percent is transferred to the State Highway Fund (SHF), 26 percent to counties, and 9 percent to municipalities.

However, revenue from several specific penalties, including seat belt infractions and driving under the influence offenses, are distributed differently.

- *Seat belt infractions.* Penalties from seat belt infractions remain in the local jurisdiction if the violation occurred on a local road. If the infraction occurred on a state or federal highway, 50 percent is transmitted to the local jurisdiction, with the remaining 50 percent credited to the HUTF. In addition, if the citing officer is a Colorado State Patrol officer, the penalty revenue is credited to the HUTF.
- *Driving under the influence.* Fifty percent of penalties from driving under the influence offenses remain in the local jurisdiction if the violation occurred on a local road, with the remaining 50 percent credited to the HUTF. If the violation occurred on a state or federal highway, 25 percent remains in the local jurisdiction, and the remaining 75 percent is allocated to the HUTF.

Surcharge revenue. Traffic infraction surcharge revenue is transmitted to the judicial districts in the Judicial Department. Surcharge revenue remains in the judicial district where the offense or infraction occurred. Of the surcharge revenue, 50 percent is credited to the judicial district's VALE Fund and 50 percent to the judicial district's Crime Victim Compensation Fund.

Driver license revocations. In FY 2018-19, the DOR revoked 2,505 driver licenses for a second or subsequent conviction of driving under restraint. In addition, in FY 2018-19, the DOR revoked 2,643 driver licenses of habitual offenders. Before a driver can have their license restored, they must first pay a \$95 driver license restoration fee; of this amount, \$73 goes to the Driver License Administrative Revocation Account and \$22 goes to the First Time Drunk Driving Account, both are within the HUTF.

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 for driving without a license. This bill reclassifies the existing offense of driving without a license from a class 2 traffic misdemeanor to a class A traffic infraction. For the last three years, 23,633 persons have been convicted and sentenced for this offense. Of the persons convicted, 17,014 were male, 6,522 were female, and 97 did not have a gender identified.

Demographically, 18,144 were White, 1,995 were Black/African American, 2,718 were Hispanic, 124 were Asian, 86 were American Indian, 393 were classified as "Other," and 173 did not have a race identified.

Prior conviction data for driving without insurance. This bill reclassifies the first offense of the existing offense of driving without insurance from a class 1 traffic misdemeanor to a class A traffic infraction. For the last three years, 22,097 persons have been convicted and sentenced for this offense. Of the persons convicted, 14,613 were male, 7,422 were female, and 62 did not have a gender identified. Demographically, 18,490 were White, 1,736 were Black/African American, 1,253 were Hispanic, 167 were Asian, 72 were American Indian, 256 were classified as "Other," and 123 did not have a race identified.

Assumptions. This fiscal note assumes that an estimated 103,541 traffic cases will be subject to additional penalties and that approximately 25,000 traffic cases are now eligible to be filed as traffic infraction cases. The fiscal note also assumes an indigence rate of 19 percent, which increases the number of payment plans administered by the Judicial Department.

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

State Revenue

The bill is estimated to increase state cash fund revenue from traffic penalties and surcharges

Fee impact. In FY 2020-21, the fiscal note estimates that 83 percent of the assumed number of traffic cases will be committed on or after the bill's effective date and reflect a 59 percent collection rate. Case numbers have been adjusted to represent a 19 percent indigence factor. The fiscal note assumes 95 percent of the increase in penalty revenue will be distributed directly to the counties and 5 percent through the HUTF.

However, it should be noted that judges have discretion in sentencing, so actual fine and surcharge revenue collected may differ from this estimate. It should also be noted that some traffic infractions were not included in the revenue estimate due to low conviction rates or no convictions. Revenue from these infractions are expected to be minimal. Traffic penalties and surcharge revenue is subject to TABOR.

**Table 2
 Revenue Under SB 20-070**

| FY | Penalty Type | Fee Change | Estimated Cases* | Estimated Assessment | Estimated Collections** |
|--------------------------|---|-------------------|-------------------------|--|--------------------------------|
| FY21 | Traffic infractions and misdemeanors | \$9–\$22.50 | 69,611 | \$1,090,223 | \$643,231 |
| | Misdemeanor to Infraction | (\$40) | 16,808 | (\$672,300) | (\$396,657) |
| | No Insurance | (\$250) | 1,131 | (\$282,719) | (\$118,742) |
| | Surcharges | \$4 | 69,611 | \$278,442 | \$189,341 |
| | Total Collections | | | | \$317,173 |
| | | | | <i>HUTF</i> | \$6,391 |
| | | | | <i>Counties</i> | \$121,441 |
| | | | | <i>Judicial districts</i> | \$189,341 |
| FY22 | Traffic infractions and misdemeanors | \$9–\$22.50 | 83,868 | \$1,313,522 | \$774,978 |
| | Misdemeanor to Infraction | (\$40) | 20,250 | (\$810,000) | (\$477,900) |
| | No Insurance | (\$250) | 1,363 | (\$340,625) | (\$143,063) |
| | Surcharges | \$4 | 83,868 | \$335,473 | \$228,122 |
| | Additional FY 2020-21 Collections Total*** | | | | \$28,832 |
| Total Collections | | | | \$410,969 | |
| | | | | <i>HUTF</i> | \$7,701 |
| | | | | <i>Counties</i> | \$146,314 |
| | | | | <i>Judicial districts</i> | \$228,122 |
| | | | | <i>Additional revenue on FY 2020-21 penalties and surcharges</i> | \$28,832 |

* Case numbers represent a 19 percent indigence factor.

** Estimated collections assume 59 percent from infractions, 52 percent from misdemeanors, and 68 percent from surcharges will be paid by June 30 of the fiscal year.

*** FY 2020-21 collections in FY 2021-22 assume 26 percent return on assessments.

HUTF revenue. The bill results in a revenue increase to the HUTF of \$6,391 in FY 2020-21 and by \$7,701 in FY 2021-22. Table 3 shows how HUTF revenue will be distributed to CDOT, counties, and municipalities. Revenue to the HUTF is subject to TABOR.

**Table 3
 HUTF Distribution Under SB 20-070**

| HUTF Distribution | FY 2020-21 | FY 2021-22 |
|---------------------------------|-------------------|-------------------|
| State Highway Fund (65 percent) | \$4,154 | \$5,006 |
| Counties (26 percent) | \$1,662 | \$2,002 |
| Municipalities (9 percent) | \$575 | \$693 |
| Total | \$6,391 | \$7,701 |

Surcharge revenue. The bill will increase surcharge revenue to the judicial districts by \$189,341 in FY 2020-21 and \$228,122 in FY 2021-22. Of the surcharge revenue, 50 percent is credited to the judicial district's VALE Fund and 50 percent to the judicial district's Crime Victim Compensation Fund. Surcharge revenue is subject to TABOR.

Driver license revenue. To the extent that fewer driver licenses are revoked under the bill, revenue will decrease to the HUTF. Of revenue distributed to the HUTF, 65 percent is distributed to the State Highway Fund for use by the Department of Transportation for transportation needs. HUTF revenue is subject to TABOR. In addition, to the extent that persons will be able to reinstate their licenses earlier, state revenue will increase. However, although the bill impacts when a person's driver license can be reinstated, it does not increase the overall number of license reinstatements.

State Expenditures

Overall, the bill will reduce state cash fund expenditures overall by \$65,854 in FY 2020-21 and \$287,072 in FY 2021-22. As shown in Table 2, Judicial Department impacts include savings for the trial courts and an increase in costs to the collections unit. These impacts are shown in Table 4 and discussed below.

**Table 4
 Expenditures Under SB 20-070**

| Cost Components | FY 2020-21 | FY 2021-22 |
|---------------------------------------|--------------------|--------------------|
| Judicial Department | | |
| Personal Services – Trial Courts | (\$227,947) | (\$273,536) |
| Operating/Capital Expenses | (\$7,600) | (\$7,600) |
| Personal Services – Collections | \$30,687 | \$36,825 |
| Operating/Capital Expenses | \$29,488 | \$3,488 |
| Computer Programming | \$77,952 | - |
| Centrally Appropriated Costs* | (\$37,284) | (46,249) |
| FTE – Trial Courts | (2.4 FTE) | (3.0 FTE) |
| FTE – Collection | 0.6 FTE | 0.7 FTE |
| Judicial Department (Subtotal) | (\$134,704) | (\$287,072) |
| Department of Revenue | | |
| Computer Programming | \$68,850 | - |
| DOR (Subtotal) | \$68,850 | - |
| Total | (\$65,854) | (\$287,072) |
| Total FTE | (1.8 FTE) | (2.3 FTE) |

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

Judicial Department. The bill decreases workload and costs for the trial courts and agencies providing representation to indigent persons and increases costs for the collections unit.

Trial courts. The bill decreases General Fund expenditures for the trial courts due to the approximately 25,000 traffic cases that will be filed as an infraction instead of a misdemeanor. This is estimated to result in a reduction of 1.0 FTE for a magistrate and 2.0 FTE for support staff, which will reduce expenditures by \$235,547 and 2.4 FTE in FY 2020-21 and \$281,136 and 3.0 FTE in FY 2021-22 and future years. Cost reductions in FY 2020-21 are prorated for the General Fund paydate shift and a September 1 start date. In addition, although the bill will not impact the number of cases related to driving under restraint, defendants may be more likely to accept a plea, which may reduce the trial court workload.

Collections unit. The bill increases cash fund expenditures for the collections unit in the Judicial Department due to the increased need for payment plans by defendants and the associated workload. This is expected to increase workload by an average of 2 minutes per case for the approximately 42,005 cases subject to new penalties after indigence rate application. This is estimated to result in a need for an additional 0.6 FTE collections investigators in FY 2020-21 and 0.7 collections investigators in FY 2021-22 and future years. Costs in FY 2020-21 are prorated to reflect a September 1 start date.

Computer programming. The bill increases IT expenditures for the IT Division in the Judicial Department to make the necessary changes to the case management system to allow for money to be distributed by percentage based on the amount of the penalty. Programming costs are calculated at 696 hours at a rate of \$112 per hour.

Office of the Public Defender and Office of Alternative Defense Counsel. The bill will decrease expenditures for the Office of the Public Defender to represent defendants in certain traffic offense cases and for the Office of Alternative Defense Counsel if a conflict exists. For informational purposes, a reduction of 1.0 attorney FTE results in an annual savings of \$90,214. This fiscal note assumes that any decreases in expenditures will be based on any changes in future caseload and will be addressed through the annual budget process.

Department of Revenue. In FY 2020-21, one-time programming costs of \$68,850 are required to update the Driver License, Record, Identification and Vehicle Enterprise Solutions (DRIVES) system with the new penalty amounts for 204 different infractions. Programming costs are calculated at 306 hours at a rate of \$225 per hour and are paid from the DRIVES Vehicle Services Account. The bill may also decrease workload for DOR to handle second or subsequent driving under restraint sanctions and habitual offender revocations. This decrease is expected to be minimal.

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. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be reduced by \$37,284 in FY 2020-21 and \$46,289 in FY 2021-22.

TABOR refunds. The bill is expected to increase state General Fund obligations for TABOR refunds by \$195,732 in FY 2020-21 and \$264,655 in FY 2021-22. Under current law and the December 2019 Legislative Council Staff forecast, the bill will correspondingly increase the amount refunded to taxpayers via sales tax refunds made available on income tax returns for tax years 2021 and 2022, respectively. A forecast of state revenue subject to TABOR is not available beyond FY 2021-22.

Local Government

The bill will increase revenues to counties by \$123,103 in FY 2020-21 and \$148,316 from traffic penalties for traffic safety improvement and law enforcement. In addition, municipal revenue will increase by \$575 in FY 2020-21 and \$693 in FY 2021-22. These revenue impacts will vary by jurisdiction. In addition, workload will increase for each county VALE board to choose a community-based advocacy program to receive additional surcharge revenue.

Similar to the state, to the extent that fewer driver licenses are revoked under the bill, revenue will decrease to the HUTF. HUTF revenue is distributed to counties (26 percent) and municipalities (9 percent) for transportation needs. Also, as stated above, to the extent that persons will be able to reinstate their licenses earlier, local government HUTF revenue will increase. However, although the bill impacts when a person's driver license can be reinstated, it does not increase the overall number of license reinstatements.

Technical Note

The Judicial Department indicates that the required computer programming may take over three months, which may require an effective date of January 1, 2021 instead of the current effective date of September 1, 2020.

In addition, current law includes over 20 traffic penalties of exactly \$100. The bill indicates how to distribute penalties over and under \$100, but not penalties of exactly \$100. The bill does not indicate if any portion of \$100 penalties should be distributed to the counties. If 20 percent of \$100 penalties are to be distributed to the counties, this fiscal note assume this will result in a reduction of HUTF revenue by \$20 per penalty.

Effective Date

The bill takes effect September 1, 2020, if no referendum petition is filed. The bill applies to offense committed on or after the bill's effective date.

State Appropriations

In FY 2020-21, the bill requires a cash fund appropriation of \$60,175 to the Judicial Department from the Judicial Collection Enhancement Fund and 0.6 FTE. In addition, the bill requires a General Fund appropriation of \$77,952 to the Judicial Department for IT-related costs. Finally, the bill also requires a cash fund appropriation of \$68,850 to the Department of Revenue from the DRIVES Maintenance and Support Cash Fund.

The bill also requires a reduction in General Fund appropriations to the Judicial Department of \$235,547 and 2.4 FTE.

State and Local Government Contacts

Judicial
Information Technology
Revenue

Counties
Public Defender
Sheriffs

District Attorneys
Public Safety
Transportation