



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

REVISED FISCAL NOTE

(replaces fiscal note dated January 14, 2019)

Drafting Number: LLS 19-0041
Prime Sponsors: Sen. Court, Rep. Melton

Date: February 27, 2019
Bill Status: Senate Appropriations
Fiscal Analyst: Aaron Carpenter | 303-866-4918, Aaron.Carpenter@state.co.us

Bill Topic: USE OF MOBILE ELECTRONIC DEVICES WHILE DRIVING

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

This bill makes using a mobile electronic device while driving a class A traffic infraction. The bill increases state and local revenue and expenditures.

Appropriation Summary: The bill requires a cash fund appropriation of \$7,425 to the Department of Revenue.

Fiscal Note Status: This fiscal note has been revised to reflect the introduced bill, as amended by the Senate Transportation Committee.

Table 1
State Fiscal Impacts Under SB 19-012

Table with 4 columns: Category, Fund Type, FY 2018-19, FY 2019-20, FY 2020-21. Rows include Revenue, Expenditures, Transfers, and TABOR Refund.

## **Summary of Legislation**

Under current law, drivers under the age of 18 are prohibited from using a mobile electronic device while driving, while drivers over 18 are prohibited from texting and driving. This bill prohibits the use of a mobile electronic device while driving for all drivers unless the driver is contacting a public safety entity, there is an emergency, or the driver is using a hands free accessory and over the age of 18.

**Use of mobile device.** Under current law, a driver under the age of 18 commits a class A traffic infraction and is subject to a \$50 fine for using a mobile device while driving, and a \$100 fine for a second offense. By expanding the prohibition on using mobile devices while driving, this bill eliminates the minor offense and imposes, for all drivers, a fine of up to \$50 and 2 points to their driver license; a \$150 fine and 4 points issued for a second offense; and a fine of \$300 and 4 points issued for a third or subsequent offense.

**Texting and driving.** If a driver of any age is using a mobile device to engage in a text message, the person commits a class 2 misdemeanor traffic offense and must be assessed a fine of \$300 and 4 points on their driver's license.

## **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.

**Use of wireless devices.** This bill expands the class A traffic infraction for texting and driving when the driver is under the age of 18 to a class 2 misdemeanor traffic offense and applies the prohibition of using a mobile phone while driving, which is a class A traffic infraction, to all persons. Under current law, an infraction is punishable by a \$50 fine for a first offense and \$100 for a second. In the last three fiscal years, 201 minors were sentenced for using a wireless phone while driving with 9 sentenced for a second offense. This amounts to about 67 sentences per year, with 3 second offenses per year. Of all minors sentenced for texting and driving, 118 were male, 79 were female, and 4 did not have gender identified. Demographically, 176 were White, 11 were African American, 5 were Hispanic, 2 were Asian, 2 where race was listed as other, and 5 did not have race information available.

**Adult texting and driving.** This bill adds a class A traffic offense for using any electronic mobile device while driving. Currently, an adult who texts and drives commits a class 2 misdemeanor traffic offense, punishable by a \$300 fine, 10 to 90 days imprisonment, or both. In the last three fiscal years, 660 adults were sentenced for texting and driving. Of these sentences, 294 were male, 236 were female, and 130 did not have gender information available. Demographically, 483 were White, 21 were African American, 21 were Hispanic, 6 were Asian, 1 race listed as other, and 128 did not have race information available. Only 1 adult sentence resulted in jail time. From FY 2015-16 to FY 2016-17, texting and driving was a class A traffic infraction for having a subsequent offense of texting and driving. During that time, 7 cases were sentenced for a subsequent texting and driving.

**Class 1 misdemeanor traffic offense.** The bill eliminates the class 1 misdemeanor traffic offense for an adult who texts and drives and causes bodily injury or death. Under current law, this misdemeanor traffic offense is punishable by 10 to 365 days in jail, a fine between \$300 and \$1,000, or both. Since June 1, 2017, when the law took effect, there have been zero sentences.

Visit [leg.colorado.gov/fiscalnotes](http://leg.colorado.gov/fiscalnotes) for more information about criminal justice costs in fiscal notes.

## **Assumptions**

The fiscal note makes the following assumptions based on the comparable crime data above:

### **Sentences for minors**

- there will be 51 sentences for texting and driving per year for minors;
- of those sentences, 49 will be for a first offense and 2 will be for a second offense;
- there will be 19 sentences for using a mobile phone while driving; and
- of those cases, 17 will be for a first offense, 1 will be a second offense, and 1 will be a third offense.

### **Sentences for adults**

- there will be at least a 50 percent increase, or 110 new class A traffic infractions per year for using a mobile device and driving;
- there will be 5 sentences per year for a second violation for driving while using a mobile phone;
- there will be an average of 1 sentences per year for a third offense for driving while using a mobile phone;
- for FY 2019-20, any second violations for using a mobile device and driving will not occur until halfway through FY 2019-20 resulting in 2 sentences in FY 2019-20 and 5 sentences in FY 2020-21; and
- that the adult third violation for using a mobile device while driving will happen in FY 2020-21.

## **State Revenue**

The bill increases cash fund revenue by \$19,222 in the FY 2019-20 and \$19,846 in FY 2020-21. Revenue increases from fine revenue are credited to the Highway User Tax Fund (HUTF), while surcharges paid on each fine are credited to the Crime Victim Compensation Fund. HUTF revenue is outlined in Table 2 and revenue to the Crime Victim Compensation Fund is outlined in Table 4. Revenue impacts to each fund are discussed below.

**Highway Users Tax Fund.** Raising the fine for minors convicted of texting and driving by \$250 for a first offense and \$200 for a second offense, as well as increasing the fine for using mobile devices while driving by \$200 for a third offense, as well as creating a new class A traffic infraction will increase revenue to the Highway Users Tax Fund (HUTF). For each violation, an individual pays a fine that is credited to the HUTF, as outlined in Table 2. As outlined in the Comparable Crime and Assumption sections, this bill results in a revenue increase to the HUTF of \$18,550 in FY 2019-20 and by \$19,150 in FY 2020-21. Table 3 shows how HUTF revenue will be distributed to the Colorado Department of Transportation (CDOT), counties, and municipalities.

**Table 2**  
**Revenue to Highway User Tax Fund Under SB 19-012**

<b>Fiscal Year</b>	<b>Type of Fee</b>	<b>Change in Fine under SB 19-012</b>	<b>Number Affected</b>	<b>Total Fee Impact</b>
FY 2019-20	Minor-Texting and Driving 1st Offense (Class 2 misdemeanor)	\$250	49	\$12,250
	Minor- Texting and Driving 2nd Offense (Class 2 misdemeanor)	\$200	2	\$400
	Minor- Using Phone 3rd Offense (Class A Infraction)	\$200	1	\$200
	Adult- Using Phone 1st Offense (Class A Infraction)	\$50	110	\$5,500
	Adult- Using Phone 2nd Offense (Class A Infraction)	\$100	2	\$200
<b>FY 2019-20 Total</b>				<b>\$18,550</b>
FY 2020-21	Minor-Texting and Driving 1st Offense (Class 2 misdemeanor)	\$250	49	\$12,250
	Minor- Texting and Driving 2nd Offense (Class 2 misdemeanor)	\$200	2	\$400
	Minor- Using Phone 3rd Offense (Class A Infraction)	\$200	1	\$200
	Adult- Using Phone 1st Offense (Class A Infraction)	\$50	110	\$5,500
	Adult- Using Phone 2nd Offense (Class A Infraction)	\$100	5	\$500
	Adult- Using Phone 3rd Offense (Class A Infraction)	\$300	1	\$300
<b>FY 2020-21 Total</b>				<b>\$19,150</b>

**Table 3**  
**HUTF Distribution Under SB 19-012**

<b>HUTF Distribution</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
CDOT (65 percent)	\$12,058	\$12,448
Counties (26 percent)	\$4,823	\$4,979
Municipalities (9 percent)	\$1,669	\$1,723
<b>Total</b>	<b>\$18,550</b>	<b>\$19,150</b>

**Judicial Department.** Cash fund revenue to the Judicial Department will increase from the \$6 surcharge as a result of an increase of class A traffic infractions credited to the Crime Victim Compensation Fund. This amount is estimated to be \$672 in FY 2019-20 and \$696 in FY 2020-21 and is outlined in Table 4.

**Table 4**  
**Revenue to Crime Victim Compensation Fund Under SB 19-012**

<b>Fiscal Year</b>	<b>Cash Funds</b>	<b>Surcharge</b>	<b>Number Affected</b>	<b>Total</b>
FY 2019-20	Adult- Class A traffic Infraction	\$6	112	\$672
<b>FY 2019-20 Total</b>				<b>\$672</b>
FY 2020-21	Adult- Class A traffic Infraction	\$6	116	\$696
<b>FY 2020-21 Total</b>				<b>\$696</b>

### **State Expenditures**

In the current FY 2018-19, state cash fund expenditures will increase by \$7,425. Judicial Department workload will increase starting in FY 2019-20, as described below.

**Department of Revenue — computer programming.** In the current FY 2018-19, the Department of Revenue (DOR) expenditures will increase by \$7,425 from the DRIVES Vehicle Services Account to program its DRIVES system. Programming is necessary to create a new common code for the new citation and configure the new fees, and points with each citation. Programming costs are calculated at 33 hours at a rate of \$225 per hour.

**Judicial Department.** Workload in the Judicial Department will increase beginning in FY 2019-20 to hear an increase of cases as a result of the bill. The department's workload model estimates that one county court judicial officer can process approximately 2,708 misdemeanor cases and 14,159 traffic infraction cases per year. Using the recent citations issued, as discussed in the Comparable Crimes section, the fiscal note assumes that this workload impact will be minimal and no change in appropriations is required.

**TABOR refunds.** The bill is expected to increase state General Fund obligations for TABOR refunds by \$19,222 in FY 2019-20. Under current law and the Legislative Council Staff December 2018 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 will increase local government revenues and expenditures, as discussed below.

**HUTF fine revenue.** The bill will increase local government HUTF revenue beginning in FY 2019-20. HUTF revenue generated by traffic fines is distributed to counties (26 percent) and municipalities (9 percent) for transportation needs, as outlined in Table 3.

**District and city attorneys.** District attorneys will see an increase in workloads to prosecute new traffic offenses. Since these new offenses can be handled with other traffic offenses, the expected increase in workload is assumed to be minimal. Traffic offenses prosecuted in a municipal court will similarly increase revenue and workload for that particular municipality.

**Jail costs.** To the extent that this bill increases the number of misdemeanor offenders sentenced to jail, costs will increase. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. However due to the low conviction rate, this impact is assumed to be minimal.

**Denver County.** Similar to state-funded courts, the bill will increase revenue, expenditures and workload for the Denver County Court, which is managed and funded by the City and County of Denver.

**Effective Date**

The bill takes effect July 1, 2019 and applies to all offenses that committed on or after this date.

**State Appropriations**

In the current FY 2018-19, this bill requires an appropriation of \$7,425 to the DRIVES Vehicle Services Account.

**State and Local Government Contacts**

Counties  
Information Technology  
Revenue  
Sheriffs

District Attorneys  
Municipalities  
Public Safety  
Transportation

Judicial  
Public Defender