

COLORADO DIVISION OF CRIMINAL JUSTICE

H.B.10-1352 Savings Analysis Report: First 12 Months of Implementation

Pursuant to 24-33.5-503(1)(u), C.R.S.

Prepared by

Peg Flick

peg.flick@cdps.state.co.us

Senior Analyst, Office of Research and Statistics

Division of Criminal Justice, Colorado Department of Public Safety

James H. Davis, Executive Director
Colorado Department of Public Safety

Jeanne M. Smith, Director
Division of Criminal Justice

Kim English, Research Director
Office of Research and Statistics



January 15, 2012

Table of Contents

5	ACKNOWLEDGEMENTS
7	EXECUTIVE SUMMARY
9	INTRODUCTION
10	METHODOLOGY
12	SENTENCING PLACEMENTS
27	OFFICE OF THE STATE PUBLIC DEFENDER
29	DRUG OFFENDER SURCHARGE
33	SUMMARY
	APPENDICES
34	Appendix A: Sentence placements cost per day
37	Appendix B: Initial placement by race/ethnicity
41	Appendix C: Sentencing ranges by classification
44	Appendix D: OSPD Estimated hours per case
	TABLES
8	Table 1. H.B.10-1352 Cost difference between pre- and post-1352 sentence placements
12	Table 2. H.B.10-1352 pre- and post-1352 initial sentence placement
13	Table 3. H.B.10-1352 pre- and post-1352 days served
14	Table 4. H.B.10-1352 pre- and post-1352 sentence costs
15	Table 5. H.B.10-1352 Section 404, <u>unlawful use</u> , pre- and post-1352 <u>filing</u> charges by crime classification
16	Table 6. H.B.10-1352 Section 404, <u>unlawful use</u> , pre- and post-1352 <u>conviction</u> charges by crime classification
16	Table 7. H.B.10-1352 Section 404, <u>unlawful use</u> , pre- and post-1352 <u>initial sentence</u>
17	Table 8. H.B.10-1352 Section 404, <u>unlawful use</u> , pre- and post-1352 <u>costs for sentences served</u>
17	Table 9. H.B.10-1352 Section 404, <u>unlawful use</u> , pre- and post-1352 <u>costs for sentences served</u>

18	Table 10. H.B.10-1352 Sections 403.5 and 405 pre- and post-1352 original <u>filing charge</u> classification
19	Table 11. H.B.10-1352 Sections 403.5 and 405 pre- and post-1352 <u>conviction charges</u> by crime classification
20	Table 12. H.B.10-1352 Sections 403.5 and 405 pre- and post-1352 <u>initial sentence</u>
21	Table 13. H.B.10-1352 Sections 403.5 and 405 pre- and post-1352 days served
21	Table 14. H.B.10-1352 Sections 403.5 and 405 pre- and post-1352 cost for <u>sentences served</u>
22	Table 15. H.B.10-1352 Section 406 pre- and post-1352, regarding <u>marijuana</u> offenses, original <u>filing</u> charges by crime classification
23	Table 16. H.B.10-1352 Section 406, concerning <u>marijuana</u> , pre- and post-1352 <u>conviction</u> charges by crime classification
24	Table 17. H.B.10-1352 Section 406, regarding <u>marijuana</u> , pre- and post-1352 initial sentence
25	Table 18. H.B.10-1352 section 406, concerning marijuana penalties, pre- and post-1352, days served
26	Table 19. H.B.10-1352 Section 406, concerning <u>marijuana</u> penalties, pre- and post-1352, costs of sentences served
27	Table 20. H.B.10-1352 Section 407, concerning <u>special offender</u> , pre- and post-1352, <u>costs</u> of sentences served
29	Table 21. Pre- and post-1352, public defender cases containing 1352 charges
30	Table 22. Pre- and post-1352, public defender cases with 1352 as most serious charge, estimated hours/case
31	Table 23. Pre- and post-1352 Drug Offender Surcharge, <u>assessed</u>

ACKNOWLEDGEMENTS

We would like to thank the following individuals who contributed data for this report and provided invaluable assistance in its analysis: Eileen Kinney, Ken Tomlinson, and Jessica Zender at the Judicial Branch; Bonnie Barr and Deb Kugler at the Department of Corrections; Doug Tracey and Mike Monkman at the Office of the State Public Defender; and Mike McConville, and Kris Griffin at the Denver County Court. In particular we would like to thank Ken, Doug, and Linda Harrison from DCJ's Office of Research and Statistics for their helpful guidance in developing this methodology. Despite this assistance, we alone are responsible for any errors or omissions.

Peg Flick, Senior Policy Analyst
Office of Research and Statistics
Division of Criminal Justice
January 2012

EXECUTIVE SUMMARY

Introduction

In May 2010 the Colorado General Assembly passed House Bill 10-1352 which substantially altered Article 18, Title 18, concerning Uniform Controlled Substances. The intent of H.B.10-1352 as specified in its legislative declaration was to generate savings from reduced crime classifications and their resulting sentences, and direct those savings into substance abuse treatment. H.B.10-1352 created a distinction between drug use and possession, and the crimes of manufacturing and distribution. Specifically, the bill lowered the crime classification for use and possession crimes, and directed expected savings to the state's Drug Offender Treatment Fund. H.B.10-1352 also increased the Drug Offender Surcharge for felony, misdemeanor, and petty offenses.

H.B.10-1352 directs the Division of Criminal Justice (DCJ) to report annually on the savings generated by its modifications (24-33.5-503(u), C.R.S.). The statute went into effect on August 11, 2010. This report analyzes the savings realized in first 12 months after its enactment.

Methodology

This analysis attempts to measure the impact of H.B.10-1352 outlined in its fiscal note by comparing the cost of offenders sentenced in the initial 12 month period after the bill's enactment date to the cost of offenders in the 12 months prior. To be included in this analysis, an offender had to be arrested on or after August 11, 2010 and be filed on, convicted and sentenced on or before August 10, 2011. Cases meeting these same criteria in 2009 were used as the comparison group. Court records for offenders were obtained from the Judicial Branch and from Denver County Court to build a model that tracked offenders meeting the criteria. Sentence start and end dates were obtained from the Office of Community Corrections in the Division of Criminal Justice, and from the Department of Corrections. Caseload data were obtained from the Office of the State Public Defender. Costs per day data were obtained for each sentence placement type. This information was combined into the model to identify and then compare offender costs for pre- and post-1352 groups as each progressed through the justice system.

Findings

Sentence Placements

Savings are generated in two ways: (1) some individuals will be sentenced to less expensive placements (probation rather than prison, for example), and (2) some sentences will be shorter. H.B.10-1352 calls for the identification of actual savings. Only those savings actually generated due to placement differences and time-served during the first 12 months of implementation are presented here.

During the first 12 months after the enactment of H.B.10-1352 the state realized a savings of **\$854,533** in sentence placements compared to offender costs in the prior 12 months (Table 1). When jail sentences were included, the savings increased to \$952,387. Although the number of offenders sentenced in the post-1352 period with an H.B.10-1352 charge as the most serious decreased by 7% (3512 to 3262), the total non-jail costs for those offenders decreased by 17%. This savings resulted in

large part by fewer sentences to the Department of Corrections, although probation also realized a savings of approximately \$148,000. Overall, there was a shift in filing and conviction charges from higher felony to lower felony classes, and from felonies to misdemeanors. It is not possible to track offender movements in the criminal justice system with precision so these results should be viewed with caution.

Table 1. H.B.10-1352 Cost difference between pre- and post-1352 sentence placements: 12 month study period (N=6774)

Statute section	Difference	Non-Jail* Difference
Use of a Controlled Substance (404)	\$44,989	-\$17,254
Distribution Manufacturing Dispensing or Sale (405)	-\$587,313	-\$597,855
Marijuana Offenses (406)	-\$407,113	-\$236,475
Fraud and Deceit (415)	-\$2,951	-\$2,951
Total	-\$952,387	-\$854,533

Data sources: Judicial Branch and Denver County court records, Department of Corrections inmate records, Community Corrections billing data, and per day sentence placement costs listed in Appendix A.

*Jail costs represent the Department of Corrections reimbursement rate and likely underestimate the savings accrued.

Office of the State Public Defender

OSPD served 450 fewer offenders charged with a controlled substance crime in the post-1352 period so it is difficult to directly compare the workloads between the pre- and post- groups. However, the lowered crime classifications implemented by H.B.10-1352 may have decreased the percentage of cases in which H.B.10-1352 charges were the most serious charge, and reduced slightly the estimated hours per case for these cases. According to OSPD, this decrease may also have resulted from normal caseload fluctuation.

Drug Offender Surcharge

H.B.10-1352 increased Drug Offender Surcharges for Petty Offenses through Felony 4 crime classifications. There were 3055 offenders in the pre-1352 period, and 3593 offenders in the post-1352 period that were assessed the Drug Offender Surcharge. The sum assessed (not collected) by the Drug Offender Surcharge increased by **\$1,530,075** from \$1,590,416 in the pre-1352 period to \$3,120,491 in the post-1352 period.

INTRODUCTION

In May 2010 the Colorado General Assembly passed House Bill 10-1352 which substantially altered Article 18, Title 18 concerning Uniform Controlled Substances. The intent of H.B.10-1352 as specified in its legislative declaration was to generate savings from reduced crime classifications and their resulting sentences, and direct those savings into substance abuse treatment. H.B.10-1352 created a distinction between drug use and possession, and the crimes of manufacturing and distribution. Specifically, the bill lowered the crime classification for use and possession crimes, and directed expected savings to the Drug Offender Treatment fund. H.B.10-1352 also increased the Drug Offender Surcharge for felony, misdemeanor, and petty offenses.

H.B.10-1352 directs the Division of Criminal Justice (DCJ) to report annually on the savings generated by its modifications (24-33.5-503(u), C.R.S.). The bill went into effect on August 11, 2010. This report analyzes the savings realized in first 12 months following its enactment.

METHODOLOGY

Mandate. H.B.10-1352 mandated that the Division of Criminal Justice determine the fiscal impact of modifications to crime classifications for controlled substances over the previous fiscal year. The fiscal note for H.B.10-1352 prepared by the Colorado Legislative Council Staff outlines the fiscal impact of the bill on the following:

1. Sentencing placements,
2. The caseload of the Office of the State Public Defender, and
3. The Drug Offender Surcharge.

This report addresses these costs only. Other costs in the criminal justice system such as court time and district attorney time are not included.

Data. This report presents findings based on a sample of offenders sentenced in the 12 month period after the bill's implementation compared to offenders sentenced in the 12 months prior. To be included in this analysis, an offender had to be arrested on or after August 11, 2010 and be charged, convicted and sentenced on or before August 10, 2011. Cases meeting these same criteria in 2009 were used as the comparison group. This analysis examined drug cases which contain charges affected by H.B.10-1352 provisions only. Cases with controlled substance charges not amended by H.B.10-1352 were not included in the study.

Sentence data (charges, conviction, placement, sentence duration, and dates) were obtained from the Judicial Branch and Denver County Court. Placement dates and time served information were obtained from the Office of Community Corrections in the Division of Criminal Justice (DCJ) and the Department of Corrections (DOC). Caseload data were obtained from the Office of the State Public Defender (OSPD). These data, plus placement daily costs were used to develop a model for tracking individual cases as they progressed through the justice system.

Offender race/ethnicity data was obtained for the purpose of evaluating the impact of H.B.10-1352 on Disproportionate Minority Contact (DMC).¹ Court records obtained from the Judicial Branch included race/ethnicity data, but records from Denver County Court did not.

Savings are generated in two ways: (1) some individuals will be sentenced to less expensive placements (probation rather than prison, for example), and (2) some sentences will be shorter. The sentence given to an offender is driven by the most serious charge in the case, among other factors. The most serious charge was determined by the highest crime classification (felony, misdemeanor, petty offense) of all the conviction charges in the case. H.B.10-1352 calls for the identification of actual savings, so only those savings actually generated due to placement differences and time served during the first 12 months of implementation are presented here. Offenders may receive multiple initial sentences (jail plus probation) and/or have their sentence modified at a later date (probation revocation). This analysis attempts to track all sentences for offenders who met the timeframe criteria.

¹ The Colorado Commission on Criminal and Juvenile Justice has recommended that to reduce the incidence of DMC, the state should evaluate the impact on minorities of any proposed changes to the criminal justice system.

To help assess the impact of H.B.10-1352, estimates were created of what sentences offenders would have received had the bill not passed. This is necessary because there were fewer offenders sentenced in the post-1352 period, therefore a decline in costs would be expected. The estimation methodology takes the post-1352 offenders, gives them the same proportion of sentence placements that the pre-1352 offenders received, and then calculates the costs per day for each offender.² This approach assumes that the proportions of sentences (jail, probation, prison, etc.) would stay the same as the previous year and is therefore limited, but it provides a rudimentary estimate of the cost of offenders had H.B.10-1352 not passed. In the tables that follow below, the estimated sentence data is labeled 'Estimated'.

As noted above, two groups of offenders were compared to determine the cost impact of H.B.10-1352. Offenders had to commit the offense, get arrested, have charges filed, be convicted and sentenced between August 11, 2009 to August 10, 2010 (comparison group) and August 11, 2010 to August 10, 2011 (study group). For many cases, 12 months is simply not enough time for trial and sentencing to take place. As a result the number of cases included in the study is not representative of the true population of offenders affected by H.B.10-1352. In subsequent reports more time will have passed and consequently more cases will be available for analysis.

Costs. Offender cost is driven by the sentence placement combined with sentence length. For this analysis, the model tracks the placement, duration of each placement, and associated costs for each offender in the pre- and post-1352 period. Total cost is calculated by multiplying the number of offenders in the placement by the cost per placement per day. Appendix A contains the sentence placement costs used in this study. Note that the savings reported here are based on the time actually served during the study and comparison periods.

For residential sentence placements operated by the state, marginal costs were used when available (See Appendix A). Marginal costs are "[t]he incremental costs incurred in providing one additional unit of output."³ Compared to marginal cost, average cost includes fixed expenditures such as buildings and personnel, and would therefore overestimate the savings that occur from housing fewer offenders unless the savings resulted in a facility closure.

In the tables that follow, the cost of jail is both excluded and included in the total cost so that the cost to the state versus cost to counties can be compared. Jail costs for all jurisdictions were not available, therefore the daily rate at which the DOC reimburses counties for prisoners being held was used (\$50.44). This amount underestimates the cost for metropolitan counties. For example, Jefferson County's daily cost is \$62⁴ and Denver County is \$70.20 per day.⁵

² A similar approach was used in the cost analysis for Senate Bill 03-318 undertaken by the Division of Probation Services.

³ Wayson, Billy L., Funke, Gail S., (1989). What Price Justice? A Handbook for the Analysis of Criminal Justice Costs, *The Institute for Economic and Policy Studies, Inc.*, 98.

⁴ Personal conversation, Chief Patsy Mundell, Detention Services, Jefferson County Sheriff's Office.

⁵ Personal conversation, Chris Wyckoff, Director of Data Analysis Unit, Denver Police.

Sentencing Placements

In the first 12 months following the enactment of H.B.10-1352, filed cases containing any drug charge declined by 4% from the prior 12 months (19,691 to 18,870).⁶ An H.B.10-1352 charge was the *most serious filing charge* in 45% of the cases containing any drug charge in the pre-1352 period. That figure declined to 41% after the statute was enacted. The most serious charge ultimately drives what sentence an offender receives, among other factors (such as criminal history). The decline of H.B.10-1352 charges as the most serious may be explained by the bill's reduction of crime classifications, although other factors discussed below may have also played a role.

Table 2 shows the initial sentence placements for those offenders *convicted* of an H.B.10-1352 charge as their most serious charge. Similar to the decline in filing charges, the number of offenders convicted with an H.B.10-1352 charge as the most serious charge declined by 7% in the post-1352 period from 3,512 to 3,262. The most notable change between the pre- and post-1352 timeframes was that in the post-1352 period a lower percentage of convicted offenders received DOC sentences, while a higher percentage received probation and probation/deferred sentences. Both minority and white offenders benefited from H.B.10-1352 changes (See Appendix B).

Table 2. H.B.10-1352 pre- and post-1352 initial sentence placement: 12 month study period (N=6774)

Placement	2009-10		2010-11	
	N	%	N	%
Community Corrections	137	4%	99	3%
Dept of Corrections	416	12%	337	10%
Division of Youth Corrections	14	<1%	9	<1%
Intensive Supervision	85	2%	87	3%
Jail+Intensive Supervision	24	1%	28	1%
Jail	300	9%	315	10%
Jail+Probation/Deferred	266	8%	203	6%
Jail+Unsupervised Probation	27	1%	25	1%
Juvenile Detention	6	<1%	10	<1%
Juvenile Detention+Probation/Deferred	16	<1%	13	<1%
JV Work (Denver)	12	<1%	5	<1%
Probation/Deferred	2087	59%	2009	62%
Probation/Deferred+Work Release	21	1%	16	<1%
Unsupervised Probation	99	3%	105	3%
Youthful Offender System	2	<1%	1	<1%
Total	3512	100%	3262	100%

Data sources: Judicial Branch and Denver County court records.

Table 3 shows the days served in each sentence placement in the pre- and post-1352 periods. There was a decrease in DOC and Community Corrections (ComCor) days served in the post-1352 period; supervised probation decreased and unsupervised probation increased. As a result, during the first 12 months of implementation of H.B.10-1352 the state realized a savings of **\$854,533** in sentence placements (See Table 4). When jail sentences were included, the savings increased by \$97,854, to \$952,387.

⁶ Judicial Branch court records; offenses committed and cases filed between 08/11/2009 to 08/10/2011.

Table 3. H.B.10-1352 pre- and post-1352 days served: 12 month study period

Placement	2009-10 Days Served		2010-11 Days Served	
	N	%	N	%
Community Corrections	10913	2%	8502	2%
Dept of Corrections	51070	11%	40957	10%
Division of Youth Corrections	2643	1%	1944	<1%
Electronic Surveillance	663	<1%	547	<1%
Intensive Supervision	15271	3%	14406	3%
Juvenile Detention	510	<1%	755	<1%
JV Work (Denver)	43	<1%	28	<1%
Probation (Denver)	1342	<1%	1297	<1%
Probation/Deferred	322543	69%	299737	70%
Unsupervised Probation	20084	4%	21587	5%
Work Release	2854	1%	2865	1%
Youthful Offender System	134	<1%	27	<1%
Jail	36031	8%	34091	8%
Total	464101	100%	426743	100%

Data sources: Judicial Branch and Denver County court records.

Although the number of offenders sentenced in the post-1352 period decreased by 7%, the total non-jail cost for those offenders decreased by 17%. This savings resulted in large part from fewer sentences to the DOC. There was a slight decrease in placement costs for some placements in the post-1352 period, but not large enough to account for the decline of this magnitude (See Appendix A for placement costs).

An “estimated” cost was calculated by imposing pre-1352 sentences on post-1352 offenders to identify the role that H.B.10-1352 had in reducing costs. Subtracting the actual non-jail total from the estimated non-jail total shows that post-1352 offenders would have cost \$473,823 more than they actually did had the law not passed (See Table 4).

Table 4. H.B.10-1352 pre- and post-1352 sentence costs: 12 month study period (N=6774)

Placement	2009-10 Actual N=3512	Estimated 2010-11* N=3262	2010-11 Actual N=3262	Difference 2009-10 and 2010-11 Actual
Community Corrections	\$379,118	\$356,641	\$295,359	-\$83,758
Dept of Corrections	\$2,690,878	\$2,532,914	\$2,158,024	-\$532,854
Division of Youth Corrections	\$472,780	\$451,553	\$366,522	-\$106,258
Electronic Surveillance	\$1,346	\$1,240	\$1,110	-\$235
Intensive Supervision	\$160,175	\$150,026	\$158,176	-\$1,998
Juvenile Detention	\$78,382	\$75,295	\$117,697	\$39,315
JV Work (Denver)**	\$0	\$0	\$0	\$0
Probation (Denver)**	\$0	\$0	\$0	\$0
Probation/Deferred	\$1,328,801	\$1,167,310	\$1,180,070	-\$148,731
Sex Offender Intensive Supervision	\$637	\$824	\$1,970	\$1,334
Unsupervised Probation	\$0	\$0	\$0	\$0
Work Release	\$0	\$0	\$0	\$0
Youthful Offender System	\$25,924	\$21,528	\$4,577	-\$21,347
Total	\$5,138,040	\$4,757,330	\$4,283,507	-\$854,533
Jail***	\$1,817,404	\$1,692,716	\$1,719,550	-\$97,854
Total	\$6,955,444	\$6,450,046	\$6,003,057	-\$952,387

Data sources: Judicial Branch and Denver County court records, Department of Corrections inmate records, Community Corrections billing data, and per day sentence placement costs listed in Appendix A.

* Estimated sentence placements are calculated using pre-1352 sentence distributions with post-1352 cases.

** Denver costs unavailable at the time this report went to print.

*** Jail costs represent the Department of Corrections reimbursement rate and likely underestimate the savings accrued.

These results should be viewed with caution for the following reasons:

- For many cases, 12 months is not enough time for trial and sentencing to take place. As a result, the number of cases included in the study is not representative of the true population of offenders affected by H.B.10-1352.
- Sentencing is influenced by a variety of factors such as aggravating and mitigating circumstances, criminal history, and plea bargaining. Cost differences observed between pre- and post-1352 offenders may not be due entirely to reductions in the crime classifications.
- H.B.10-1352 reduced crime classifications for certain felony and misdemeanor crimes, but sentence ranges overlap across crime classifications. For example, the presumptive range for a Class 6 felony is 12 month to 18 months and the range for Class 5 felony is 1 to 3 years (See Appendix C).
- Sentences imposed are driven by the most serious crime, among other factors, and the most serious crime is designated by the crime classification. Because H.B.10-1352 reduced crime classifications, the frequency in which an H.B.10-1352 charge is the most serious crime is likely reduced. However offenders will still be sentenced for a crime, just not an H.B.10-1352 crime.
- Offenders are often charged with multiple crimes, may have cases in multiple jurisdictions, and may receive concurrent or consecutive sentences. In this study 72% of offenders in both study and comparison periods had multiple charges in their case, and 7% had more than one case.

Consequently, tracking offender sentence placements precisely for costing purposes is not possible.

- Despite improvements in records management systems, data errors or omissions affect the accuracy of the model. An intensive effort was made to correct obvious errors in the data, but it is likely that some errors remain.

The number and sequence of sentence placements given to an offender can be complicated. Offenders may receive multiple initial sentence placements and/or then have their sentence altered at a later date. For example, it is not uncommon for a sentence to include a jail term plus probation. Subsequent modifications to initial sentences can also occur, such as probation revocation. ***This analysis attempts to track all sentence placements and subsequent modifications as indicated in the court records. However, 7% of offenders in both study periods had more than one case during the study period. For these offenders sentences for only one case were included in the model due to the complexity of tracking combinations of concurrent and consecutive sentences across multiple jurisdictions.***

H.B.10-1352 Savings Analysis by Statute Section

For each section of Title 18, Article 18, that was modified by H.B.10-1352, the costs for offenders sentenced pre-and post-1352 was calculated and compared. Both initial filing charges and conviction charges are presented to show how many offenders entered the system with a H.B.10-1352 charge and, ultimately, how many were convicted of that crime. Initial sentence placements are included to show the effects of the reduction in crime classifications and qualifying amounts. Finally, the days served and associated costs are presented for each sentence placement.

18-18-404, C.R.S. Unlawful use of a controlled substance.

H.B.10-1352 lowered the crime classification from a Felony 6 (F6) to a 2nd degree misdemeanor (M2) for use of a Schedule I or II controlled substance other than marijuana. It also lowered the crime classification for use of Schedule III, IV, and V drugs from an M1 to an M2.

Table 5 shows that there were 186 people who were filed on with Section 404, unlawful use, offenses in 2009-10, and 103 charged in 2010-11. As a result of H.B.10-1352 in 2010-11 more offenses were filed as M2 than as felonies.

Table 5. H.B.10-1352 Section 404, unlawful use, pre- and post-1352 filing charges by crime classification: 12 month study period

Crime Classification	2009-10		2010-11	
	%	N	%	N
F5	1%	2	0%	0
F6	84%	157	1%	1
M1	9%	17	0%	0
M2	5%	10	98%	101
M3	0%	0	1%	1
Total	100%	186	100%	103

Data sources: Judicial Branch and Denver County court records.

Table 6 shows that more offenders were convicted of section 404 than were charged in the post-1352 period. This is likely due to plea bargaining of higher class charges down to lower class charges. The vast majority of convictions in the post-1352 period were for the lower level M2 classification, down from F6s and M1s.

Table 6. H.B.10-1352 Section 404, unlawful use, pre- and post-1352 conviction charges by crime classification: 12 month study period*

Crime Classification	2009-10		2010-11	
	%	N	%	N
F5	1%	1	0%	0
F6	76%	63	1%	1
M1	20%	17	0%	0
M2	2%	2	99%	111
Total	100%	83	100%	112

Data sources: Judicial Branch and Denver County court records.

*Excludes fine-only sentences.

Table 7 shows the initial sentence placements for those convicted in the pre- and post-1352 periods. Fewer offenders received a DOC sentence in the post-1352 period, however jail sentences increased from 5% to 22% and unsupervised probation increased from 1% to 10% of offenders.

Table 7. H.B.10-1352 Section 404, unlawful use, pre- and post-1352 initial sentence: 12 month study period

Placement	2009-10		2010-11	
	%	N	%	N
Dept of Corrections	2%	2	0%	0
Intensive Supervision	1%	1	<1%	1
Jail	5%	4	22%	25
Jail+Probation/Deferred	10%	8	6%	7
Jail+Unsupervised Probation	2%	2	3%	3
Juvenile Detention+Probation/Deferred	1%	1	1%	1
Probation/Deferred	77%	64	56%	63
Unsupervised Probation	1%	1	10%	11
Work Release	0%	0	1%	1
Total	100%	83	100%	112

Data sources: Judicial Branch and Denver County court records.

Table 8 shows the days served for each sentence placement for the comparison and study periods. In the post-1352 period DOC days served decreased and jail and probation days increased. More probation days were served in the post-1352 period although there was one fewer offender sentenced to probation than the period before. This increase could be due to differences in when offenders started their sentence, since the analysis examines days actually served within the period. More unsupervised probation days were also served.

Table 8. H.B.10-1352 Section 404, unlawful use, pre- and post-1352 days served: 12 month study period

Placement	2009-10 Days Served N=83	2010-11 Days Served N=112
Dept of Corrections	259	0
Electronic Surveillance	31	24
Intensive Supervision	124	55
Jail	1059	2293
Juvenile Detention	46	21
Probation/Deferred	8858	9362
Unsupervised Probation	358	1979
Work Release	0	187

Data sources: Judicial Branch and Denver County court records.

Although there were more offenders convicted in the post-1352 period, a cost savings of \$17, 254 was realized when jail sentences were excluded. When jail sentences are included there is a cost increase of \$44,989 rather than savings (Table 9). The majority of the savings resulted largely from no DOC sentences for the post-1352 offenders. The estimated non-jail cost for post-1352 offenders is \$76,277 which is \$35,193 higher than the actual non-jail cost. This estimate assumes that some offenders would have received DOC sentences had the law not passed.

Table 9. H.B.10-1352 section 404, unlawful use, pre- and post-1352 costs for sentences served: 12 month study period

Placement	2009-10 Actual N=83	Estimated 2010-11* N=112	2010-11 Actual N=112	Difference 2009-10 and 2010-11 Actual
Dept of Corrections	\$13,647	\$18,389	\$0	-\$13,647
Electronic Surveillance	\$63	\$85	\$49	-\$14
Intensive Supervision	\$1,208	\$1,764	\$811	-\$397
Juvenile Detention	\$7,070	\$9,665	\$3,274	-\$3,796
Probation/Deferred	\$36,350	\$46,374	\$36,950	\$600
Unsupervised Probation	\$0	\$0	\$0	\$0
Work Release	\$0	\$0	\$0	\$0
Total	\$58,337	\$76,277	\$41,084	-\$17,254
Jail**	\$53,416	\$72,079	\$115,659	\$62,243
Total	\$111,753	\$148,355	\$156,743	\$44,989

Data sources: Judicial Branch and Denver County court records, Department of Corrections inmate records, Community Corrections billing data, and per day sentence placement costs (see Appendix A).

* Estimated sentence placements are calculated using pre-1352 sentence distributions with post-1352 cases.

** Jail costs represent the Department of Corrections reimbursement rate.

18-18-403.5, C.R.S. Unlawful possession of a controlled substance, and 18-18-405, C.R.S. Unlawful distribution, manufacturing, dispensing or sale.

H.B.10-1352 relocates the act of possession from 18-18-405, C.R.S., to a new section numbered 403.5. *In this study, data for Section 403.5 is combined together with data for Section 405 to enable direct comparison of costs for pre- and post-1352 timeframes.*

18-18-403.5, C.R.S. Unlawful possession of a controlled substance.

Section 403.5 was created by removing possession offenses from Section 405. This new section made the following modifications to crime classifications for possession:

- Increased the maximum amount for possession--from 1 gram to 4 grams or less--of Ketamine, Flunitrazepam, or a Schedule I or II drug, except Methamphetamine, for the Felony Class 6 (F6) classification.
- Reduced the classification for possession of more than 4 grams of Ketamine, Flunitrazepam, or a Schedule I or II drug, except Methamphetamine to Felony Class 4 (F4). Classified two grams or less of Methamphetamine as an F6; 2 grams or more as an F4.
- Reduced the classification for possession of Schedule III, IV, and V drugs except Flunitrazepam or Ketamine to an M1. Previously only Schedule V drug possession was penalized as an M1.
- Removed the increased felony class for prior convictions.

18-18-405, C.R.S. Unlawful distribution, manufacturing, dispensing or sale.

Modifications to Section 405 involved the following changes:

- Moved the act of possession from this section to a new section in Title 18, Article 18 numbered 403.5.
- Added distribution, manufacturing, dispensing or sale of Ketamine as an F3 or F2, depending on the offender’s prior convictions.
- Added selling, dispensing, or distributing a controlled substance other than marijuana to a minor if the adult is more than 2 years older as an F3 punishable by a state prison term.
- Added Ketamine to subsections 2.5 and 5 regarding prior convictions and offenses.

Table 10 shows that for filing charges there was a decrease in the higher crime classifications of F3 and F4 to the lower crime classification of F6 in the post-1352 period. There was also an increase in M1 filings (from 1% to 4%) in the post-1352 period. Similarly, Table 11 shows an increase in F6 conviction charges from 40% to 45% of offenders and for M1 charges from 22% to 27%.

Table 10. H.B.10-1352 Sections 403.5 and 405 pre- and post-1352 original filing charge classification: 12 month study period

Crime Classification	2009-10		2010-11	
	%	N	%	N
F	<1%	11	<1%	1
F2	4%	187	1%	27
F3	29%	1538	27%	1343
F4	24%	1283	12%	621
F5	1%	79	<1%	20
F6	41%	2161	56%	2849
M1	1%	49	4%	182
M2	<1%	1	<1%	3
Total	100%	5309	100%	5046

Data sources: Judicial Branch and Denver County court records.

Table 11. H.B.10-1352 Sections 403.5 and 405 pre- and post-1352 conviction charges by crime classification: 12 month study period*

Crime Classification	2009-10		2010-11	
	%	N	%	N
F2	<1%	4	<1%	1
F3	9%	230	8%	178
F4	24%	601	16%	386
F5	5%	133	4%	92
F6	40%	989	45%	1055
M1	22%	545	27%	644
M2	<1%	1	<1%	10
Missing data	0%	0	<1%	1
Total	100%	2503	100%	2367

Data sources: Judicial Branch and Denver County court records.

*Excludes fine-only sentences.

Data on initial sentence placements show that the total number of offenders convicted and sentenced in 2010-11 decreased from 2503 to 2367 in the post-1352 period (Table 12). For those convicted, the use of DOC and Community Corrections (ComCor) placements decreased (DOC cases decreased 16% to 14% and ComCor cases decreased 5% to 4%). The use of probation increased from 59% to 63% of offenders.

Table 12. H.B.10-1352 Sections 403.5 and 405 pre- and post-1352 initial sentence: 12 month study period

Placement	2009-10		2010-11	
	%	N	%	N
Community Corrections	5%	131	4%	93
Dept of Corrections	16%	393	14%	325
Division of Youth Corrections	<1%	9	<1%	6
Electronic Surveillance+Probation/Deferred	<1%	6	<1%	7
Intensive Supervision	3%	64	3%	74
Intensive Supervision+Jail	1%	18	1%	24
Intensive Supervision+Juvenile Detention	<1%	2	<1%	3
Intensive Supervision+Probation/Deferred	<1%	4	<1%	2
Intensive Supervision+Work Release	<1%	4	<1%	1
Jail	4%	94	5%	119
Jail+Probation (Denver)	0%	0	<1%	2
Jail+Probation/Deferred	9%	215	7%	158
Jail+Unsupervised Probation	1%	16	1%	16
Jail+Work Release	<1%	1	<1%	3
Juvenile Detention	<1%	1	<1%	3
Juvenile Detention+Probation/Deferred	<1%	6	<1%	5
Probation (Denver)	0%	0	<1%	3
Probation/Deferred	59%	1490	63%	1480
Probation/Deferred+Work Release	1%	17	1%	15
Sex Offender Intensive Supervision	<1%	1	<1%	2
Unsupervised Probation	1%	28	1%	25
Work Release	<1%	2	0%	0
Youthful Offender System	<1%	2	<1%	1
Total	100%	2503	100%	2367

Data sources: Judicial Branch and Denver County court records.

Table 13 shows the days served in the pre- and post-1352 periods for all the sentence placements. Considerably fewer days were spent in DOC in the post-1352 period (48,147 vs. 39,661). This resulted in a savings of \$447,127 in DOC costs, and a total savings of \$597,855 when jail days are not counted (Table 14). Fewer days on regular probation and more days on unsupervised probation were served in the post-1352 period than in the prior period.

Although there were 5% fewer offenders sentenced in the post-1352 period, the cost of those offenders decreased by 14%. The estimated non-jail cost for the post-1352 offenders if the law had not passed is \$323,170 higher (\$4,080,841 vs. the actual cost of \$3,757,671).

Table 13. H.B.10-1352 Sections 403.5 and 405 pre- and post-1352 days served: 12 month study period

Placement	2009-10 Days Served N=2503	2010-11 Days Served N=2367
Community Corrections	10401	7950
Dept of Corrections	48147	39661
Division of Youth Corrections	1587	1595
Electronic Surveillance	337	355
Intensive Supervision	12935	12849
Jail	25484	25693
Juvenile Detention	280	427
Probation (Denver)	0	586
Probation/Deferred	235831	224274
Sex Offender Intensive Supervision	73	165
Unsupervised Probation	7641	9924
Work Release	2354	2322
Youthful Offender System	134	27

Data sources: Judicial Branch and Denver County court records.

Table 14. H.B.10-1352 Sections 403.5 and 405 pre- and post-1352 cost for sentences served: 12 month study period

Placement	2009-10 Actual N=2503	Estimated 2010-11* N=2367	2010-11 Actual N=2367	Difference 2009-10 and 2010-11 Actual
Community Corrections	\$361,331	\$341,564	\$276,183	-\$85,148
Dept of Corrections	\$2,536,865	\$2,398,080	\$2,089,738	-\$447,127
Division of Youth Corrections	\$283,883	\$282,810	\$300,721	\$16,839
Electronic Surveillance	\$684	\$648	\$721	\$37
Intensive Supervision	\$137,163	\$129,117	\$140,459	\$3,296
Juvenile Detention	\$43,033	\$41,311	\$66,565	\$23,532
Probation (Denver)**			\$0	\$0
Probation/Deferred	\$966,006	\$864,961	\$876,737	-\$89,269
Sex Offender Intensive Supervision	\$637	\$824	\$1,970	\$1,334
Unsupervised Probation	\$0	\$0	\$0	\$0
Work Release	\$0	\$0	\$0	\$0
Youthful Offender System	\$25,924	\$21,528	\$4,577	-\$21,347
Total	\$4,355,525	\$4,080,841	\$3,757,671	-\$597,855
Jail***	\$1,285,413	\$1,215,100	\$1,295,955	\$10,542
Total	\$5,640,938	\$5,295,941	\$5,053,625	-\$587,313

Data sources: Judicial Branch and Denver County court records, Department of Corrections inmate records, Community Corrections billing data, and per day sentence placement costs listed in Appendix A.

* Estimated sentence placements are calculated using pre-1352 sentence distributions with post-1352 cases.

** Denver costs unavailable at the time this report went to print.

*** Jail costs represent the Department of Corrections reimbursement rate and likely underestimate the savings accrued.

18-18-406, C.R.S. Offenses relating to marijuana and marijuana concentrate

The following crime classification changes were made to offenses related to marijuana, per H.B.10-1352:

- Increased the amount of marijuana to 2 ounces or less (from 1 ounce) for unlawful possession, consumption, display, or use for a 2nd Degree Petty Offense (PO2).
- Reduced the classification to an M2 from an M1 for possession of 2 to 6 ounces from 1 to 8 ounces. The F5 for prior convictions was dropped.
- Lowered the upper illegal amount of marijuana to 6 ounces but no more than 12 ounces, or 3 ounces or less of marijuana concentrate. The classification for this was lowered from F5 to M1. The F4 for prior convictions was dropped.
- Created a classification of F6 for possession of more than 12 ounces of marijuana, or 3 ounces of concentrate.
- Reduced the classification for manufacturing or selling 5 pounds or less of marijuana or concentrate to an F5; F4 for more than 5 pounds and less than 100 pounds, or one pound up to 100 pounds concentrate; F3 for more than 100 pounds.
- Raised the quantity of marijuana distributed to a minor older than 15 but under 18 years, to more than 2 ounces, but less than 5 pounds, or less than one pound of concentrate for the F4 classification; F3 for the sale of more than 5 pounds, or 1 or more pounds concentrate to a minor older than 15. For offenses in which the minor is younger than 15 years old the classification was raised to F3 from F4.
- Based crime classification for cultivation on the number of plants: M1 for 6 or less plants; F5 for more than 6 plants but less than 30; F4 for more than 30 plants.

Table 15 shows a decrease in higher felony filing charges in the post-1352 period. Felony 4 filing charges decreased from 13% to 4% of offenders in the post-1352 period while the lower felony F5 and F6 filing charges increased in the post-1352 period. Misdemeanor 2 charges increased over the pre-1352 period as well. The same trend can be seen in the conviction charges with decreased F4's but increased felony 5 and 6s (Table 16).

Table 15. H.B.10-1352 Section 406 pre- and post-1352, regarding marijuana offenses, original filing charges by crime classification: 12 month study period

Crime Classification	2009-10		2010-11	
	%	N	%	N
F3	<1%	5	<1%	26
F4	13%	883	4%	231
F5	2%	123	6%	362
F6	<1%	5	2%	99
M1	3%	221	4%	212
M2	<1%	2	2%	109
M3	0%	0	<1%	1
PO2	81%	5,421	82%	4,782
Total	100%	6,660	100%	5,822

Data sources: Judicial Branch and Denver County court records.

Table 16. H.B.10-1352 Section 406, concerning marijuana, pre- and post-1352 conviction charges by crime classification: 12 month study period*

Crime Classification	2009-10		2010-11	
	%	N	%	N
F3	0%	1	1%	4
F4	19%	172	5%	37
F5	8%	78	17%	131
F6	2%	16	5%	40
M1	30%	276	22%	173
M2	1%	5	6%	49
M3	0%	0	<1%	2
PO2	41%	376	44%	347
Total	100%	924	100%	783

Source: Judicial Branch and Denver County court records.

*Excludes fine-only sentences.

The pattern of initial sentences given to offenders in the pre- and post-1352 periods looks similar (Table 17). In both periods, DOC sentences were given to 2% of the cases, but in the post-1352 period that involved 12 offenders versus 20 offenders in the pre-1352 period. Table 18 shows a decrease in days served for all sentence placements except ComCor and Juvenile Detention.

Table 17. H.B.10-1352 Section 406, regarding marijuana, pre- and post-1352 initial sentence: 12 month study period*

Placement	2009-10		2010-11	
	%	N	%	N
Community Corrections	1%	6	1%	6
Dept of Corrections	2%	20	2%	12
Division of Youth Corrections	1%	5	<1%	3
Electronic Surveillance	<1%	1	<1%	1
Electronic Surveillance+Probation (Denver)	<1%	2	0%	0
Electronic Surveillance+Probation/Deferred	<1%	3	<1%	2
Intensive Supervision	1%	13	1%	8
Intensive Supervision+Jail	0%	0	<1%	2
Intensive Supervision+Juvenile Detention	0%	0	<1%	1
Intensive Supervision+Probation/Deferred	<1%	3	0%	0
Intensive Supervision+Work Release	<1%	2	<1%	1
Jail	21%	198	21%	164
Jail+Probation (Denver)	<1%	1	<1%	1
Jail+Probation/Deferred	5%	43	5%	38
Jail+Unsupervised Probation	1%	9	1%	6
Juvenile Detention	<1%	3	<1%	3
Juvenile Detention+Probation/Deferred	1%	9	1%	7
JV Work (Denver)	<1%	1	<1%	2
JV Work (Denver)+Probation (Denver)	<1%	3	<1%	1
JV Work (Denver)+Unsupervised Probation	1%	8	<1%	2
Probation (Denver)	1%	5	<1%	3
Probation/Deferred	56%	515	57%	450
Probation/Deferred+Work Release	<1%	4	<1%	1
Unsupervised Probation	8%	70	9%	69
Total	100%	924	100%	783

Data sources: Judicial Branch and Denver County court records.

*Excludes fine-only sentences.

Table 18. H.B.10-1352 section 406, concerning marijuana penalties, pre- and post-1352, days served: 12 month study period

Placement	2009-10 N=924	2010-11 N=783
Community Corrections	512	552
Dept of Corrections	2608	1296
Division of Youth Corrections	1056	349
Electronic Surveillance	295	168
Intensive Supervision	2139	1337
Jail	9488	6105
Juvenile Detention	184	307
JV Work (Denver)	43	28
Probation (Denver)	1342	711
Probation/Deferred	77854	66101
Unsupervised Probation	12085	9684
Work Release	500	356

Data sources: Judicial Branch and Denver County court records.

For Section 406 concerning marijuana crimes, the largest cost savings results from the Division of Youth Corrections (DYC) and the DOC. There were 2 fewer offenders serving DYC time during the post-1352 period which resulted in a savings. The DOC savings resulted from more than half the days served in the post-1352 period. Probation also shows savings in the post-1352 period.

There were a total of 141 (15%) fewer offenders in the post-1352 period for Section 406 crimes. However, there was a 33% decrease in non-jail costs for the post-1352 offenders. The estimated non-jail cost of the post-1352 offenders had the bill not passed is \$600,212, \$115,459 higher than their actual cost of \$484,753 (Table 19).

Table 19. H.B.10-1352 Section 406, concerning marijuana penalties, pre- and post-1352, costs of sentences served: 12 month study period

Placement	2009-10 N=924	Estimated 2010-11* N=783	2010-11 N=783	Difference 2009-10 and 2010-11 Actual
Community Corrections	\$17,787	\$15,077	\$19,176	\$1,390
Dept of Corrections	\$137,416	\$116,445	\$68,286	-\$69,129
Division of Youth Corrections	\$188,897	\$168,743	\$65,800	-\$123,097
Electronic Surveillance	\$599	\$508	\$341	-\$258
Intensive Supervision	\$21,804	\$19,145	\$16,907	-\$4,897
Juvenile Detention	\$28,279	\$24,319	\$47,858	\$19,579
JV Work (Denver)**	\$0	\$0	\$0	\$0
Probation (Denver)**	\$0	\$0	\$0	\$0
Probation/Deferred	\$326,446	\$255,975	\$266,383	-\$60,062
Unsupervised Probation	\$0	\$0	\$0	\$0
Work Release	\$0	\$0	\$0	\$0
Total	\$721,227	\$600,212	\$484,753	-\$236,475
Jail***	\$478,575	\$405,538	\$307,936	-\$170,639
Total	\$1,199,802	\$1,005,750	\$792,689	-\$407,113

Data sources: Judicial Branch and Denver County court records, Department of Corrections inmate records, Community Corrections billing data, and per day sentence placement costs listed in Appendix A.

* Estimated sentence placements are calculated using pre-1352 sentence distributions with post-1352 cases.

** Denver costs unavailable at the time this report went to print.

*** Jail costs represent the Department of Corrections reimbursement rate and likely underestimate the savings accrued.

18-18-407, C.R.S. Special Offender

Section 407 concerns aggravating circumstances which designate a Special Offender. H.B.10-1352 increased the thresholds for importing Schedule I and II controlled substances to more than 4 ounces from any amount, and more than 2 ounces of methamphetamine from any amount. It also added as an aggravating circumstance the presence of a weapon within reach, and a confederate in possession of a firearm.

In the pre-1352 period there were 317 offenders charged with Section 407 aggravating circumstances. In the post-1352 period, 201 offenders were charged. Of the 317 offenders charged, 8 were convicted in 2009-10 and 3 were convicted 2010-11. Table 20 shows a cost savings of \$9,553 due to the fact that fewer offenders were charged and convicted post-1352. This savings is not added to the total savings for H.B.10-1352 because Section 407 is a sentence enhancer which is added to cases meeting the conditions of the statute, and offenders with the Section 407 enhancer have been included in the sections above. The resulting cost data is discussed here for completeness.

Table 20. H.B.10-1352 Section 407, concerning special offender, pre- and post-1352, costs of sentences served: 12 month study period

Placement	2009-10 N=8	2010-11 N=3	Difference 2009-10 and 2010-11
Dept of Corrections	\$19,495	\$22,130	\$2,635
Youthful Offender System	\$12,188	\$0	-\$12,188
Total	\$31,683	\$22,130	-\$9,553

Data sources: Judicial Branch and Denver County court records, Department of Corrections inmate records, Community Corrections billing data, and per day sentence placement costs listed in Appendix A.

18-18-415, C.R.S. Fraud and Deceit

H.B.10-1352 changes to Section 415 reduced the classification for Fraud and Deceit to F6 from F5. The F4 for prior convictions was also dropped.

Eight offenders were filed under Section 415 in the pre-1352 study period and none in the post-1352 period. There was one offender convicted under Section 415 during the pre-1352 period and none in the post-1352 period. The result is a savings of \$2,951 to the state.

16-13-303, C.R.S. and 16-13-503, C.R.S.

Title 16, Article 13, Section 303, addresses Class 1 public nuisances. H.B.10-1352 raised the amount of marijuana to 16 ounces from 8 for the purposes of deeming marijuana property a public nuisance. Section 503 specifies which acts are subject to the Colorado Contraband and Forfeiture Act. H.B.10-1352 raised the qualification amount of marijuana to 16 ounces from 8.

During the pre- and post- 12 month study periods there were no filings, convictions, or sentences found for the modified paragraphs of these sections.

OFFICE OF THE STATE PUBLIC DEFENDER

Records were obtained from the Office of the State Public Defender (OSPD) for cases containing any H.B.10-1352 charge opened during the 12 month analysis periods in 2009-10 and 2010-11. OSPD excluded class 1 felony cases, juvenile cases, and miscellaneous proceedings from the data extract because their workloads would not be impacted by the law. Offense and case filed dates were obtained from Judicial Branch and Denver County court records and added to OSPD data to ensure that cases fell within the study periods. It was not necessary that the offender be sentenced within the same timeframe since the work of the Public Defender begins when the case is filed.

OSPD calculates workload using the crime classification for the most serious charge in the case. Most offenders (93%) in the dataset had multiple charges. Table 21 shows the total number of cases which met the timeframe criteria, partitioned into cases where an H.B.10-1352 charge was the top charge, and those cases in which it was not the top charge.

In the 2010-11 study period, fewer cases had an H.B.10-1352 charge as the most serious charge compared to 2009-10: 71% versus 76%, respectively. To ascertain the effect if the law had not been passed, the pre-1352 crime classification was identified for each 2010-11 charge and included in the analysis.⁷ In Table 21 the column labeled “Estimated 2010-11” shows that if the law had not passed, a H.B.10-1352 charge would have been the most serious charge in 75% of the cases versus 71%.

The reduction represented in Table 21 would not, alone, represent a workload savings for OSPD since the offender was still served by a public defender. In 2009-10, 24% of the cases found in the OSPD data did not have an H.B.10-1352 charge as the top charge. In 2010-11 that proportion was 29%. Although an H.B.10-1352 charge was not the most serious, these cases still were served by public defenders.

Table 21. Pre- and post-1352, public defender cases containing 1352 charges: 12 month study period

H.B.10-1352	2009-10		2010-11		Estimated 2010-11	
	%	N	%	N	%	N
Most Serious Charge	76%	3787	71%	3261	75%	3413
F2	1%	44	<1%	13	<1%	13
F3	6%	322	7%	309	13%	610
F4	20%	980	10%	469	51%	2321
F5	4%	197	5%	213	4%	181
F6	26%	1323	29%	1342	2%	98
M1	16%	819	16%	714	4%	189
M2	<1%	11	2%	113	0%	0
PO2	2%	89	2%	87	0%	0
UNK	<1%	2	<1%	1	0%	0
Not Most Serious Charge	24%	1226	29%	1302	25%	1150
Total	100%	5013	100%	4563	100%	4563

Data sources: Office of the State Public Defender, State Judicial Branch, Denver County Court.

⁷ It is not possible to calculate the prior crime classification with complete accuracy. Many of the changes in H.B.10-1352 involved increases in the quantity of the drug, and this information is not available in the electronic court record or the electronic OSPD data. When multiple crime classification choices based upon drug amount were available the higher classification was used for the estimation which may overestimate the findings.

In the post-1352 period there was a 14% decrease in the number of cases having a H.B.10-1352 charge as the most serious charge. However, the estimated hours associated with serving those cases decreased by 20%. This decrease was largely accounted for by the shift from higher felony cases, particularly F4 cases, to lower felony and misdemeanor cases in the post-1352 period (Table 22). The average estimated hours per case for a H.B.10-1352 offender in the post-1352 period decreased as a result: 9.75 (31,781.47 / 3261) compared to 10.47 (39,667.92 / 3787) in the pre-1352 period.

Table 22. Pre- and post-1352, public defender cases with 1352 as most serious charge, estimated hours/case: 12 month study period

Crime Classification	2009-10			2010-11		
	Estimated Hours/Case*	N	%	Estimated Hours/Case*	N	%
F2	2,332.88	44	1%	689.26	13	<1%
F3	5,657.54	322	9%	5,429.13	309	9%
F4	1,1191.6	980	26%	5,355.98	469	14%
F5	2,249.74	197	5%	2,432.46	213	7%
F6	9,618.21	1,323	35%	9,756.34	1,342	41%
M1	8,067.15	819	22%	7,032.9	714	22%
M2	59.4	11	<1%	610.2	113	3%
PO2	480.6	89	2%	469.8	87	3%
UNK	10.8	2	<1%	5.4	1	<1%
Total	39,667.92	3,787	100%	31,781.47	3,261	100%

Data sources: Office of the State Public Defender, State Judicial Branch, Denver County Court.

*OSPD uses a standard calculation of estimated hours per case for each crime classification (see Appendix D).

OSPD served 450 fewer offenders charged with a H.B.10-1352 crime in the post-1352 period so it is difficult to directly compare the workloads between the pre- and post- groups. However, the lowered crime classifications implemented by H.B.10-1352 may have decreased the percentage of cases in which H.B.10-1352 charges were the most serious charge, and reduced slightly the estimated hours per case for cases with an H.B.10-1352 charge as the most serious. According to OSPD, this decrease may also have resulted from normal caseload fluctuation.

18-19-103, C.R.S. DRUG OFFENDER SURCHARGE

H.B.10-1352 made the following changes to the Drug Offender Surcharge:

- Increased F4 surcharge from \$1,500 to \$2,000.
- Increased F5 surcharge from \$1,125 to \$1,500.
- Increased F6 surcharge from \$750 to \$1,250.
- Increased M1 surcharge from \$600 to \$1,000.
- Increased M2 surcharge from \$450 to \$600.
- Increased M3 surcharge from \$225 to \$300.
- Increased Petty Offenses surcharge from \$100 to \$200.

In the post -1352 timeframe, 3593 offenders were assessed the Drug Offender Surcharge compared to 3055 in the pre-1352 period (Table 23). The difference along with the changes above resulted in an increase of **\$1,530,075** in the surcharge assessed between the two periods. There were 538 more offenders assessed the surcharge in the post-1352 timeframe, so to determine what portion of that increase was due to H.B.10-1352, projected fees were calculated using the pre-1352 surcharge schedule with the post-1352 cases. Table 23 shows that had H.B.10-1352 not passed, the additional 538 offenders would have increased the fund by \$2,120,225 instead of \$3,120,491 that actually was assessed. This data represents assessed amounts, not amounts actually collected by the state.

Table 23. Pre- and post-1352 Drug Offender Surcharge, assessed* : 12 month study period (N=6648)

Crime Classification	2009-10		2010-11		Estimated**	2009-10 and 2010-11 Difference
	Amount	N	Amount	N		
F4	\$652,580	439	\$747,380	378	\$567,000	\$94,800
F5	\$167,175	152	\$270,970	183	\$205,875	\$103,795
F6	\$363,165	484	\$1,147,271	953	\$714,750	\$784,106
M	\$1,684	7	\$1,000	1	\$600	-\$684
M1	\$257,245	446	\$716,415	745	\$447,000	\$459,170
M2	\$2,650	6	\$84,600	147	\$66,150	\$81,950
M3	\$600	1	\$600	2	\$450	\$0
PO	\$95	1	\$0	0	\$0	-\$95
PO1	\$100	1	\$0	0	\$0	-\$100
PO2	\$145,122	1518	\$152,255	1184	\$118,400	\$7,133
Total	\$1,590,416	3055	\$3,120,491	3593	\$2,120,225	\$1,530,075

Data sources: Judicial Branch court records and Denver County Court records.

*The drug offender surcharge was waived for 6% (205) of offenders in the 2009-10 period and 5% (189) of offenders in 2010-11 period.

**Estimated surcharges are calculated using the Drug Offender Surcharge schedule that was in place prior to H.B.10-1352's enactment.

SUMMARY

This analysis examined the cost of offenders outlined in the bill's fiscal note for the first 12 months of the implementation of H.B.10-1352. Savings are generated in two ways: (1) some individuals will be sentenced to less expensive placements (probation rather than prison, for example), and (2) some sentences will be shorter. H.B.10-1352 calls for the identification of actual savings. Only those savings actually generated due to placement differences and time served during the first 12 months of implementation are presented here.

The **state realized a savings** in sentences served of \$854,533 for the post-1352 (note that this figure excludes county jail costs). When jail sentences were included, the savings increased to \$952,387. Although the number of offenders sentenced in the post-1352 period with an H.B.10-1352 charge as the most serious decreased by 7% (3512 to 3262), the total non-jail costs for those offenders decreased by 17%. This savings resulted in large part by fewer sentences to the Department of Corrections. It is not possible to track offender movements in the criminal justice system with precision so these results should be viewed with caution

The **Office of the State Public Defender** served 450 fewer offenders with a controlled substance crime, and there was also a decline in the estimated hours per case for those who did have an H.B.10-1352 charge as the most serious because lower crime categories are estimated by the OSPD to have fewer hours per case. While new crime categories defined in H.B.10-1352 likely caused the shift to lower crime classifications, normal fluctuations may also have played a role in the changes reported by the OSPD.

The **Drug Offender Surcharge** was assessed to 538 more offenders and, with the increases in the surcharge amount per H.B.10-1352, increased by \$1,530,075 in the first 12 months of the bill's enactment. Note that this is the assessed amount and not the amount collected.

APPENDIX A: SENTENCE PLACEMENTS COST PER DAY

Sentence Placements Cost Per Day

Daily Cost of Probation

Type of supervision	FY 2010	FY 2011
Adult regular	\$4.08	\$3.88
Juvenile regular	\$4.45	\$4.36
Adult intensive supervision	\$10.71	\$10.56
Juvenile intensive supervision	\$9.74	\$14.74
Sex Offender Intensive Supervision	\$8.72	\$11.74
Electronic Surveillance	\$2.03	\$2.03

Data sources: Division of Probation Services, State Court Administrator's Office, Colorado Judicial Department.

Daily Cost of the Colorado Department of Corrections

Type of supervision	FY 2010	FY 2011
Private prison*	\$52.69*	\$52.69*
Youthful Offender System	\$193.46	\$169.51

Data sources: YOS: Colorado Department of Corrections, Office of Planning & Analysis, *Youthful Offender System Annual Report, Fiscal Year 2009-2010*.

*Marginal cost.

Daily Cost of the Division of Youth Corrections Placements

Type of supervision	FY 2010	FY 2011
Detention	\$153.69*	\$155.89*
Commitment	\$178.88*	\$188.54*

Data source: Division of Youth Corrections.

*Marginal cost.

Daily Cost of Community Corrections FY 2010 and 2011

	FY 2010	FY 2011
	\$37.74	\$37.74

Data source: Division of Criminal Justice, Office of Community Corrections.

Jail costs are reimbursed by the Department of Corrections at \$50.44 per day.

Work Release cost was \$0 per day; offenders pay for work release.

APPENDIX B: INITIAL SENTENCE PLACEMENT BY RACE/ETHNICITY

**H.B.10-1352 pre- and post-1352 initial sentence placement distribution by race/ethnicity*:
12 month study period (N=6774)**

Sentence Placement	2009-10							2010-11						
	A	B	H	I	O	U	W	A	B	H	I	O	U	W
Community Corrections	7%	7%	3%				4%	10%	4%	2%		5%	1%	3%
Dept of Corrections	7%	15%	17%	7%	10%	2%	11%	7%	14%	18%	10%	15%	1%	9%
Division of Youth Corrections		<1%	1%			1%	<1%		1%				1%	<1%
Electronic Surveillance							<1%					5%		
Electronic Surveillance+ Intensive Supervision							<1%							
Electronic Surveillance+ Probation (Denver)						1%								
Electronic Surveillance+ Probation/Deferred			<1%				<1%			1%				<1%
Intensive Supervision	11%	5%	1%				2%	10%	6%	4%				2%
Intensive Supervision+Jail		1%	<1%				1%		2%	<1%				1%
Intensive Supervision+ Juvenile Detention		<1%	<1%						<1%	<1%	10%			<1%
Intensive Supervision+ Probation/Deferred						1%	<1%							<1%
Intensive Supervision+ Work Release							<1%							<1%
Jail	4%	5%	4%	14%	5%	79%	5%		6%	4%		25%	73%	6%
Jail+Probation (Denver)						1%							2%	
Jail+Probation/Deferred	4%	6%	9%		14%		8%	3%	5%	9%		5%		6%
Jail+Unsupervised Probation		<1%	1%			1%	1%		<1%	1%			2%	1%
Jail+Work Release							<1%		<1%					<1%
Juvenile Detention							<1%			1%			1%	<1%
Juvenile Detention+Probation/Deferred	4%		0%				1%			1%				<1%
JV Work (Denver)						1%								1%
JV Work (Denver)+Probation (Denver)						2%								1%
JV Work (Denver)+ Unsupervised Probation						5%								1%
Probation (Denver)						3%								4%
Probation/Deferred	63%	58%	59%	71%	67%	2%	63%	63%	59%	58%	80%	40%	6%	66%
Probation/Deferred+ Unsupervised Probation			<1%				<1%							
Probation/Deferred+ Work Release		<1%	<1%				1%		1%	1%		5%	1%	<1%
Sex Offender Intensive Supervision		<1%							<1%					<1%
Unsupervised Probation		1%	3%	7%	5%	2%	3%	3%	1%	1%			8%	4%
Unsupervised Probation+ Work Release							<1%							<1%
Work Release							<1%							<1%
Youthful Offender System							<1%	3%						
Total	100 %	100 %	100 %	100 %	100 %	100 %	100 %	100 %	100 %	100 %	100 %	100 %	100 %	100 %

Data sources: Judicial Branch and Denver County court records. Denver County court records did not contain race/ethnicity and are counted under Unknown.

*Judicial race data often does not distinguish between race and ethnicity (particularly “White” and “Hispanic”). As a result, the ability to accurately interpret this data is limited.

Race/Ethnicity Key

A	Asian	O	Other
B	Black	W	White
H	Hispanic	U	Unknown
I	American Indian		

**H.B.10-1352 pre- and post-1352 initial sentence placement counts by race/ethnicity*:
12 month study period (N=6774)**

Sentence Placement	2009-10							2009-10 Total	2010-11							2010-11 Total
	A	B	H	I	O	U	W		A	B	H	I	O	U	W	
Community Corrections	2	35	15				85	137	3	16	5		1	1	73	99
Dept of Corrections	2	80	72	1	2	4	255	416	2	57	56	1	3	1	217	337
Division of Youth Corrections		1	4			2	7	14		2				1	6	9
Electronic Surveillance							2	2					1			1
Electronic Surveillance+ Probation (Denver)						2		2								
Electronic Surveillance+Probation/Deferred			1				8	9			3				6	9
Intensive Supervision	3	28	6				40	77	3	23	11				45	82
Intensive Supervision+Jail		5	1				12	18		8	1				17	26
Intensive Supervision+ Juvenile Detention		1	1					2		1	1	1			1	4
Intensive Supervision+ Probation/Deferred						1	6	7							3	3
Intensive Supervision+ Work Release							6	6							2	2
Jail	1	28	16	2	1	136	112	296		24	12		5	117	150	308
Jail+Probation (Denver)						1		1						3		3
Jail+Probation/Deferred	1	31	37		3		194	266	1	21	28		1		152	203
Jail+Unsupervised Probation		2	5			2	18	27		1	3			3	18	25
Jail+Work Release							1	1		1					2	3
Juvenile Detention							4	4			2			1	3	6
Juvenile Detention+Probation/Deferred	1		2				13	16			2				11	13
JV Work (Denver)						1		1						2		2
JV Work (Denver)+ Probation (Denver)						3		3						1		1
JV Work (Denver)+ Unsupervised Probation						8		8						2		2
Probation (Denver)						5		5						6		6
Probation/Deferred	17	304	255	10	14	3	1464	2067	19	234	178	8	8	9	1537	1993
Probation/Deferred+ Unsupervised Probation			1				1	2								
Probation/Deferred+ Work Release		1	2				18	21		3	2		1	1	9	16
Sex Offender Intensive Supervision		1						1		1					1	2
Unsupervised Probation		7	12	1	1	4	73	98	1	3	4			12	84	104
Unsupervised Probation+ Work Release							1	1							1	1
Work Release							2	2							1	1
Youthful Offender System							2	2	1							1
Total	27	524	430	14	21	172	2324	3512	30	395	308	10	20	160	2339	3262

Data sources: Judicial Branch and Denver County court records. Denver County court records did not contain race/ethnicity and are counted under Unknown.

*Judicial race data often does not distinguish between race and ethnicity (particularly “White” and “Hispanic”). As a result, the ability to accurately interpret this data is limited.

Race/Ethnicity Key

A	Asian	O	Other
B	Black	W	White
H	Hispanic	U	Unknown
I	American Indian		

APPENDIX C: SENTENCING RANGES BY CLASSIFICATION

Sentencing Ranges by Crime Classification

FELONIES COMMITTED ON OR AFTER JULY 1, 1993					
PRESUMPTIVE RANGE			EXCEPTIONAL CIRCUMSTANCES		
CLASS	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM	MANDATORY PAROLE
1	Life Imprisonment	Death	Life Imprisonment	Death	
2	8 years \$5000 fine	24 years \$1,000,000	4 years	48 years	5 years
3	4 years \$3000	12 years \$750,000	2 years	24 years	5 years
Extraordinary Risk Crime	4 years \$3000 fine	16 years \$750,000	2 years	32 years	5 years
4	2 years \$2000 fine	6 years \$500,000	12 month	12 years	3 years
Extraordinary Risk Crime	2 years \$2000 fine	8 years \$500,000	12 month	16 years	3 years
5	12 month \$1000 fine	3 years \$100,000	6 months	6 years	2 years
Extraordinary Risk Crime	12 month \$1000 fine	4 years \$100,000	6 months	8 years	2 years
6	12 month \$1000 fine	18 months \$100,000 fine	6 months	3 years	12 month
Extraordinary Risk Crime	12 month \$1000 fine	2 years \$100,000	6 months	4 years	12 month

Source: 2009 Colorado Revised Statutes.

MISDEMEANORS COMMITTED ON OR AFTER JULY 1, 1993

TYPE	MISDEMEANORS	
CLASS	MINIMUM	MAXIMUM
1	6 MONTHS \$500 FINE	18 MONTHS \$5,000 FINE
EXTRAORDINARY RISK CRIME	6 MONTHS \$500 FINE	24 MONTHS \$5,000
2	3 MONTHS \$250 FINE	12 MONTHS \$1,000 FINE
3	\$50 FINE	6 MONTHS \$750 FINE

Source: 2009 Colorado Revised Statutes.

APPENDIX D: OSPD ESTIMATED HOURS PER CASE

2008 Case Type Groups	Average Estimated Hours Per Case
Trial & Pre-trial Cases by Case Class	
Class 1	369:10
Class 2 & Felony Assault	53:01
Class 3	17:34
Class 4-5	11:25
Class 6	7:16
Class 1 Misdemeanor & Sex Assault	9:51
Class 2-3 Misdemeanor & Traffic/Other	5:24
All Juvenile	8:51
Probation Violation	1:50

Data source: Colorado State Public Defender *Fiscal Year 2010 Budget Request*, October 31, 2008.