



Jail Impact of House Bill 2010-1347 on Selected Colorado Judicial Districts

The Colorado Commission on Criminal and Juvenile Justice made a series of recommendations regarding the enhancement of penalties for those convicted of second and subsequent intoxicated driving offenses. Consequently, H.B. 10-1347, enacted on July 1, 2010, modified penalties for driving while ability impaired (DWAI) and driving under the influence (DUI). This report analyzes DUI and DWAI sentences between 2008 and 2013 to show the impact of the Commission's recommendation on jails. Selected

Specifically H.B. 10-1347:

- increased penalties for a second and subsequent DUI or DWAI (minimum 10 days jail),
- added penalties for a third DUI or DWAI (minimum 60 days jail),
- specified that during the term of incarceration, sentencing alternatives such as home detention are available only if offenders meet certain criteria,
- specified that repeat offenders are not eligible for earned time or good time while in jail,
- mandated that in addition to the jail sentence, repeat offenders receive two years of probation with one year of suspended jail time which may be imposed if the offender violates the probation conditions,
- mandated that first-time offenders with a .20 or above blood alcohol level be subject to a mandatory jail (minimum 10 days),
- increased the persistent drunk driver surcharge .

For this analysis, cases containing a DUI or DWAI charge (C.R.S. 42-4-1301) from FY 2009 to FY 2013 were extracted from the Judicial Branch's ICON system. DUI/DWAI conviction records from Denver County were also obtained.

In comparing charges from cases filed before H.B. 10-1347 to those filed in the post-1347 period, it was not possible to identify cases involving prior convictions for all jurisdictions. Before the passage of H.B. 10-1347, prior convictions were not recorded by clerks in a consistent fashion. Consequently, for this analysis, five jurisdictions were selected for study because identifying prior convictions was possible (See Appendix A for a discussion of the identification of cases with prior DUI/DWAI convictions). The districts chosen were the 2nd, 8th, 17th, 18th, and 20th (see Appendix B for district map).

Note that offenders may have had more than one case during this timeframe, and those with multiple cases may have had consecutive or concurrent sentences which are not distinguished here. See Appendix A for a discussion of the method by which sentences were determined.

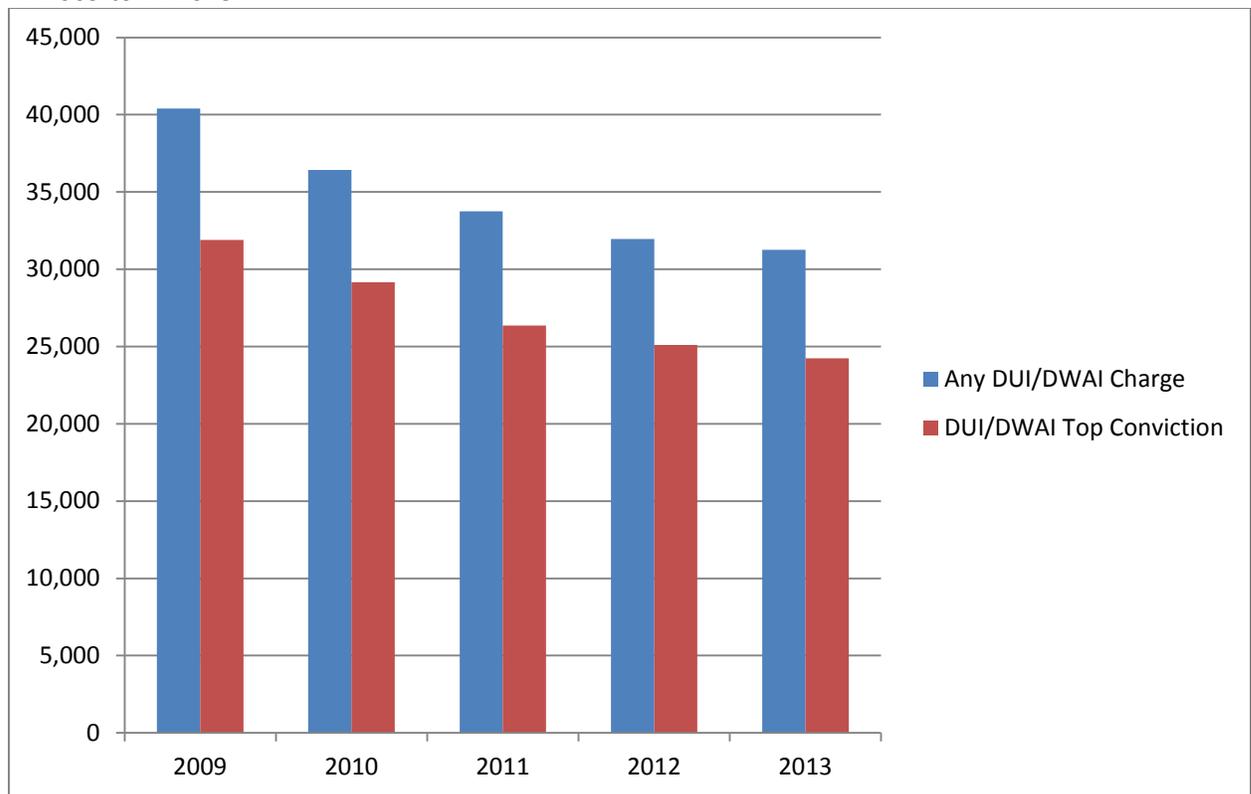
Summary Findings

- From FY 2009 to FY 2013 filings and convictions for DWAI/DUI declined in all jurisdictions, but the proportion of offenders as well as the actual number of offenders convicted for prior DWAI/DUI increased in the five jurisdictions examined.
- For those with prior DUI/DWAI convictions in the jurisdictions examined jail sentences alone and probation sentences alone declined, while jail as a condition of probation sentences increased, both as a proportion and in actual number from FY 2009 to FY 2013.
- The total number of non-suspended jail days received by offenders who had prior DUI/DWAI convictions increased in the jurisdictions examined.

Detailed Findings

From FY 2009 to FY 2013, filings containing DUI/DWAI charges and convictions for DUI/DWAI as the most serious charge declined (Figure 1).

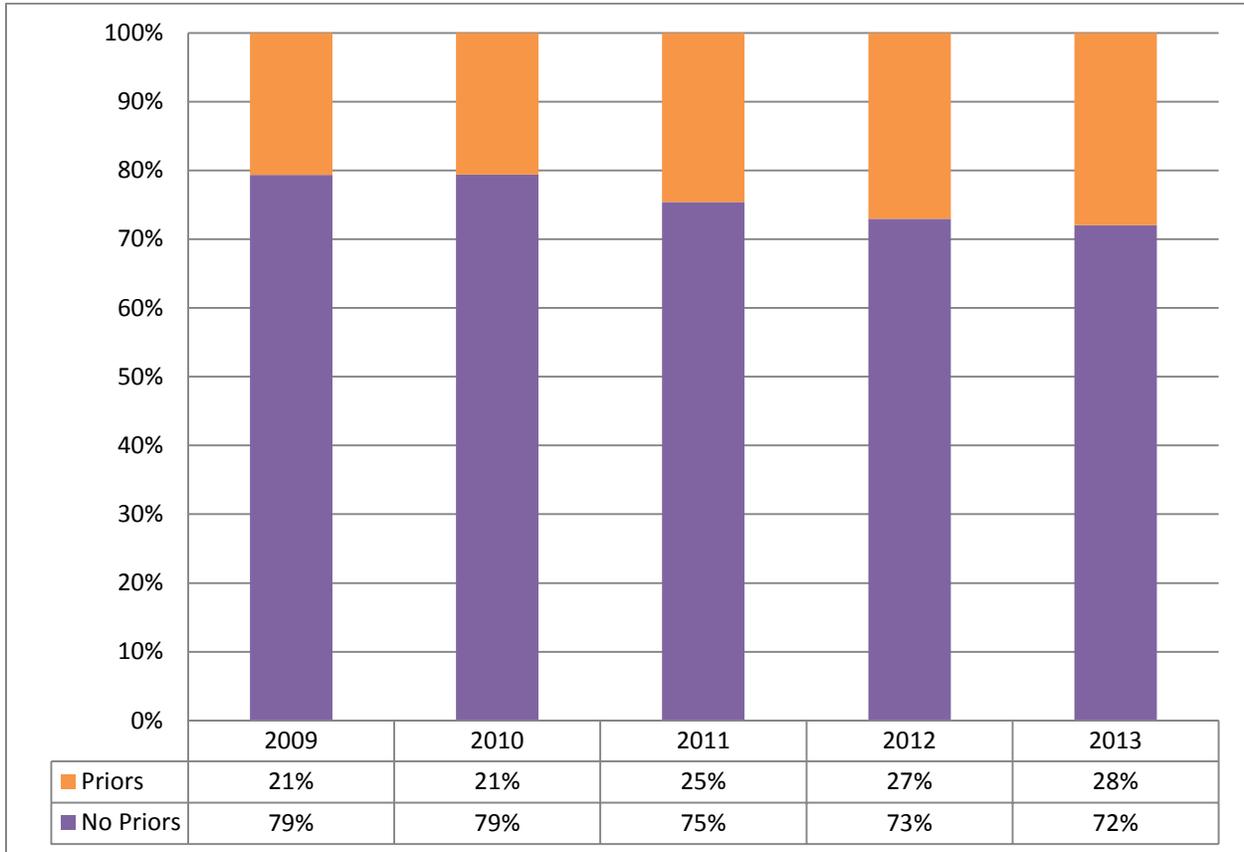
Figure 1. Number of filing charges and convictions in all districts with C.R.S. 42-4-1301 in cases filed FY 2009 to FY 2013.



Data source: Records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Denver County filings compiled from Judicial Branch Annual Statistical Reports.

In the five judicial districts examined, the proportion of offenders convicted who had prior DUI/DWAI convictions increased from 21% in FY 2009 to 28% in FY 2013 (Figure 2).

Figure 2. Proportion of offenders convicted of DUI/DWAI* with prior convictions in Districts 2, 8, 17, 18 and 20, FY 2009 to FY 2013.



Data sources: Records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Denver County court records obtained from Denver County.

*Excludes non-motorized DUI/DWAI.

Convicted offenders who received jail plus a probation sentence increased from 53% in FY 2009 to 90% in FY 2013 (Table 1). During this period, offenders receiving only a jail sentence or only a probation sentence declined. Jail sentences declined from 24% to 4%; probation sentences declined from 22% to 4% (Table 1).

Table 1. Sentences for offenders convicted of DUI/DWAI* with prior convictions in Districts 2, 8, 17, 18 and 20, FY 2009 to FY 2013.

| Sentence | 2009 | 2010 | 2011 | 2012 | 2013 |
|--------------------|--------------|--------------|--------------|--------------|--------------|
| N | 3,138 | 2,927 | 3,156 | 3,410 | 3,554 |
| Jail | 24% | 22% | 6% | 4% | 4% |
| Jail+Probation | 53% | 54% | 87% | 90% | 90% |
| None/Other | 1% | 2% | 1% | 1% | 1% |
| Probation/Deferred | 22% | 23% | 6% | 4% | 4% |
| Total | 100% | 100% | 100% | 100% | 100% |

Data sources: Records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Denver County court records obtained from Denver County.

*Excludes non-motorized DUI/DWAI.

Table 2 shows that the proportion of offenders receiving the shortest sentence (1 to 10) days increased from 30% to 38%, but the total number of offenders receiving any jail sentence increased from 2,354 in FY 2009 to 3,267 in FY 2013.

Table 2. Non-suspended jail sentences for offenders with prior convictions Districts 2,8,17,18 and 20.

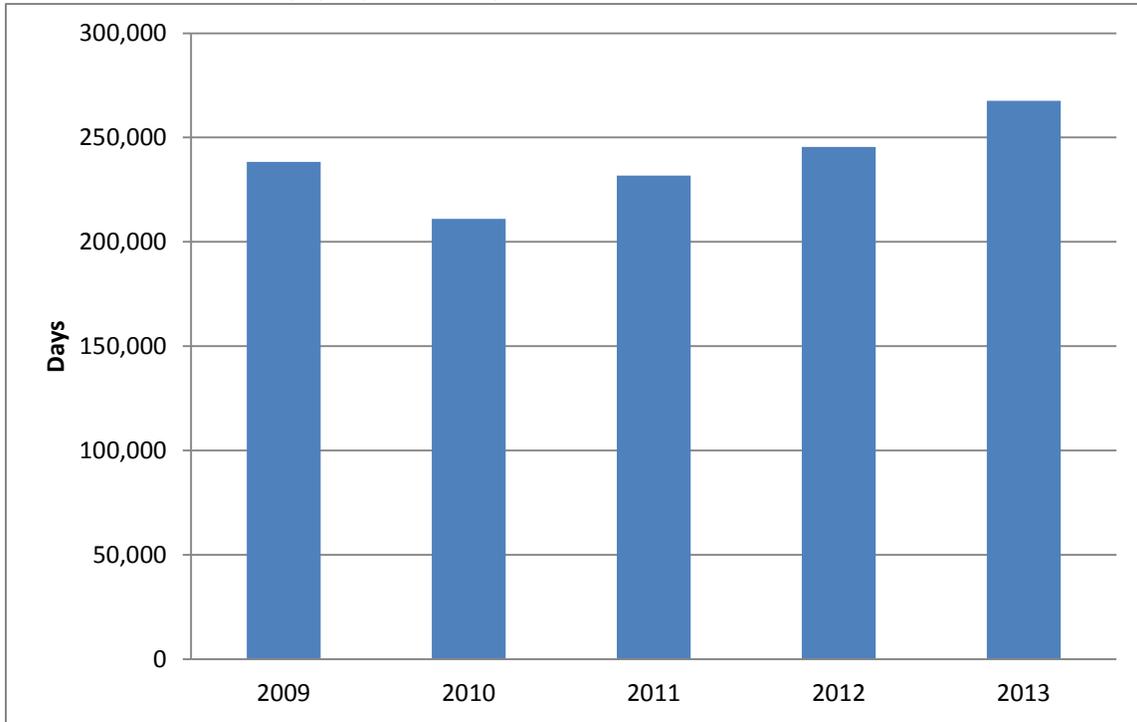
| Jail sentence (days) | 2009 | 2010 | 2011 | 2012 | 2013 |
|----------------------|--------------|--------------|--------------|--------------|--------------|
| N | 2,354 | 2,169 | 2,867 | 3,156 | 3,267 |
| 1 to 10 | 30% | 35% | 37% | 37% | 38% |
| 11 to 60 | 30% | 24% | 30% | 30% | 27% |
| 61 to 120 | 12% | 13% | 10% | 12% | 13% |
| 121 to 180 | 7% | 7% | 6% | 6% | 7% |
| 181 to 365 | 21% | 21% | 16% | 15% | 15% |
| 366 to 730 | <1% | 1% | <1% | <1% | 1% |
| Total | 100% | 100% | 100% | 100% | 100% |

Data sources: Records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Denver County court records obtained from Denver County.

*Excludes non-motorized DUI/DWAI.

Consequently, the total number of non-suspended jail days to which offenders were sentenced increased in these jurisdictions after the passage of H.B. 10-1347 in FY 2011 (Figure 3).

Figure 3. Total number of non-suspended jail days received by offenders with prior DUI/DWAI* convictions in Districts 2, 8, 17, 18 and 20, FY 2009 to FY 2013.



Data sources: Records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Denver County court records obtained from Denver County.

*Excludes non-motorized DUI/DWAI.

Appendix A – Determining Prior Convictions and Jail Sentences

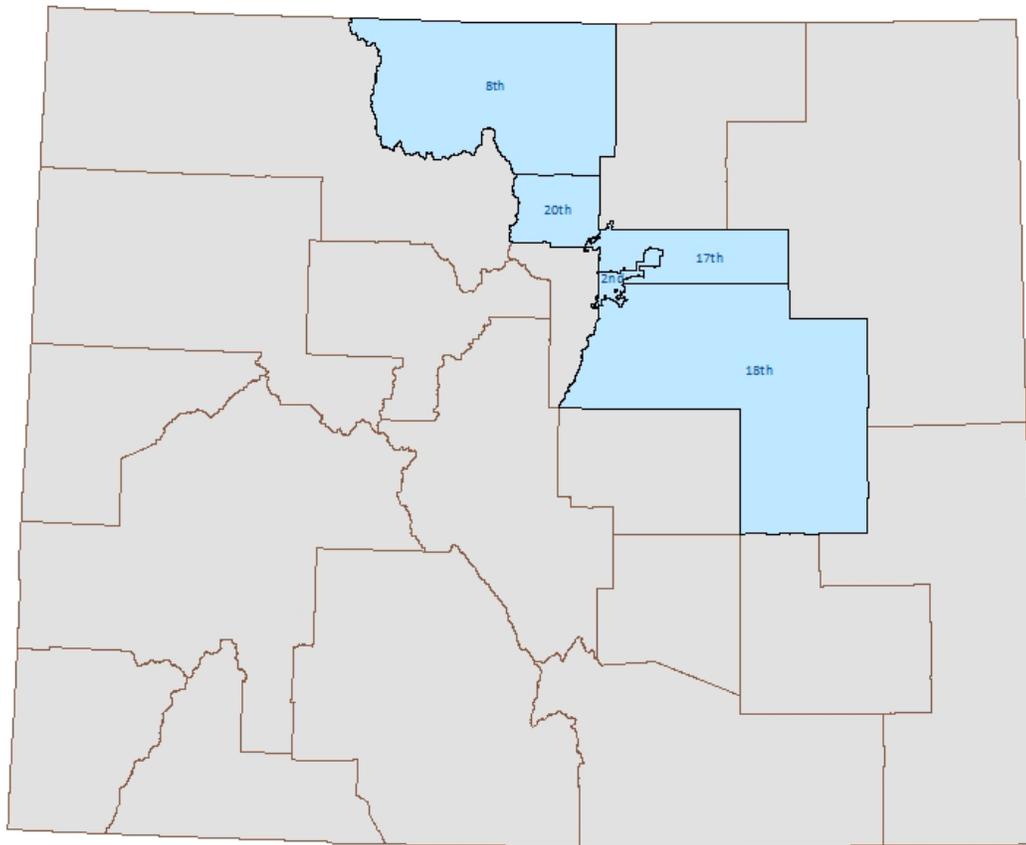
H.B. 10-1347 introduced individual statute numbers under C.R.S. 42-4-1307 to indicate second and subsequent convictions for DUI/DWAI, thus making their identification straightforward. Prior to its passage court clerks used a variety of ways to indicate prior convictions. Some clerks noted “priors” or “2nd” or “3rd” in a text field on the DUI/DWAI charge. Others made no notation at all. In the jurisdictions selected for this study it was possible to find notations about prior convictions by searching this text field. However due to the ad hoc nature of noting priors, it is possible that in these jurisdictions some prior convictions were not annotated and are therefore missed in this analysis.

There are several factors which impact the precise quantification of sentence data: the manner in which ICON tracks sentences, variations in how clerks record data, and data entry errors. ICON’s court records system keeps tracks of sentences in a cumulative manner. For example, an offender may receive an initial sentence of jail, plus probation, and various fines. Each of these constitutes a row of data and would be labeled as sentence ID #1. If later a change is required, such as waiving a fine or adding a jail term, all the initial sentences are repeated and appear as sentence ID #2 and then the change or addition is made to this group. If another change is required such as a probation revocation, the whole group is repeated again and labeled sentence ID #3. Because the exact same information from the first group of sentences is repeated in the second and any subsequent group, it is difficult to determine what is added to a sentence, modified, or merely fixed.

This analysis selected out all the sentences with sentence ID #1 to get the offender’s initial sentence. This group of sentences contained one or more jail sentences. The individual sentence may also contain a modifier or flag that indicates whether jail was suspended or if there was a stay of execution. When a sentence group contained a suspended jail sentence plus an unsuspended one, an effort was made to determine the net jail time. Depending on how the sentences were entered, either one jail term was subtracted from the other, or one jail term was ignored and the other was used. Cases with more than 2 jail sentences were excluded from this study because it was not possible to determine with precision the actual resulting net jail days in an automated fashion. However 99% of cases containing jail sentences had one or two jail entries.

Other difficulties in determining jail time were encountered. For example, the sentence notes contained additional modifications to the sentences. These notes appear as free text and therefore are not easily used to quantify sentences. Examples include specifying that the jail sentence was actually in-home detention or that the jail time was suspended. A final weakness involves using the sentence ID #1 group of sentences. Often a clerk will fix errors such as changing the sentence amount from years to days. However the fix appears in a subsequent sentence ID group and would therefore be missed.

Appendix B – Selected Judicial Districts



Judicial Districts and Counties

- 2nd - Denver**
- 8th - Jackson & Larimer**
- 17th - Adams & Broomfield**
- 18th - Arapahoe, Douglas, Elbert & Lincoln**
- 20th - Boulder**