

COLORADO DIVISION OF CRIMINAL JUSTICE

H.B.10-1352 Savings Analysis Report: First Two Years of Implementation

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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. The bill lowered the crime classification for use and possession, 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 directed the Division of Criminal Justice (DCJ) to report annually on the savings generated by its modifications (24-33.5-503(u), C.R.S.). This final report analyzes the savings realized in the first two years after its implementation.

Methodology

This analysis measured the impact of H.B.10-1352 by comparing the cost of offenders sentenced in the initial two year period after the bill's enactment to the cost of offenders sentenced in the two years prior. To be included in this analysis, an offender had to commit the offense on or after August 11, 2010 and be filed on, convicted, and sentenced on or before August 10, 2012. Cases meeting these same criteria from August 11, 2008 to August 10, 2010 were used as the comparison group. This analysis attempts to track the cost of all offender sentences. To do so, court records were obtained from the Judicial Branch and from Denver County Court. To supplement court records, 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. This information, combined with cost per day of each sentence placement, was used to determine the actual cost of offenders as they progressed through the system. In addition to actual cost, the cost of offender sentences if H.B.10-1352 had not passed was estimated. The savings generated by H.B.10-1352 presented in this report is the difference between the actual cost of sentences served and the estimated costs of the sentences they would have served had the bill not been enacted.

Findings

Sentence Placements

In the two years prior to H.B. 10-1352, **13,006** offenders met the study criteria and were convicted and sentenced. After the passage of the bill the number of offenders who met the criteria and were convicted and sentenced dropped to **10,891**. Offenders sentenced post-1352 cost **\$12,173,655** less than the pre-1352 offenders when the cost of jail was excluded, and **\$12,841,430** less when the cost of jail was included. With fewer offenders sentenced post-1352 there would naturally be a cost difference, so to determine the impact of H.B.10-1352 an estimate of what offenders would have received had the bill not been enacted was calculated. Using this estimate, during the first two years after the enactment of H.B.10-1352 the state realized an estimated savings of **\$7,629,172** in sentence placements. When jail sentences were included, the

estimated savings decreased to **\$7,310,997**. Table 1 shows the estimated cost savings for each section of H.B.10-1352. The majority of the estimated savings (**\$5,977,575**) were realized in the Department of Corrections (DOC) sentences (Table 2). This largely resulted from H.B.10-1352's reduction of some felonies to misdemeanors. *It is currently not possible to track all offender movements in the criminal justice system with precision so these results should be viewed with caution.*

Table 1. H.B.10-1352 Estimated cost difference: 2 year study period

Statute section	Estimated* Total Difference	Estimated* Non-Jail Difference
Use of a Controlled Substance (404)	(\$96,046)	(\$463,854)
Unlawful possession of a controlled substance (403)/ Distribution Manufacturing Dispensing or Sale (405)	(\$5,980,170)	(\$6,387,977)
Marijuana Offenses (406)	(\$974,426)	(\$519,608)
Fraud and Deceit (415)	(\$260,356)	(\$257,733)
Total	(\$7,310,998)	(\$7,629,172)

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 costs are calculated using pre-1352 sentence distributions with post-1352 cases.

Table 2. H.B.10-1352 Cost difference between pre- and post-1352 sentence placements: 2 year study period

Placement	Actual 2009-10 (N=13,006)	Estimated* 2011-12 (N=10,891)	Actual 2011-12 (N=10,891)	Actual 2011-12 MINUS Actual 2009-10	Actual 2011-12 MINUS Estimated 2011-12
Community Corrections	\$3,603,684	\$3,290,990	\$2,554,224	(\$1,049,461)	(\$736,766)
Dept of Corrections	\$28,560,094	\$25,843,339	\$19,865,763	(\$8,694,331)	(\$5,977,575)
Division of Youth Corrections	\$2,853,305	\$2,616,561	\$2,240,007	(\$613,298)	(\$376,554)
Electronic Surveillance	\$9,998	\$8,583	\$5,266	(\$4,732)	(\$3,317)
Intensive Supervision	\$1,189,306	\$1,134,041	\$1,008,252	(\$181,054)	(\$125,789)
Juvenile Detention	\$382,671	\$330,343	\$371,107	(\$11,563)	\$40,765
Parole	\$2,130,695	\$2,233,568	\$1,622,896	(\$507,799)	(\$610,672)
Probation/Deferred	\$7,329,482	\$6,060,154	\$6,184,808	(\$1,144,674)	\$124,654
Sex Offender ISP	\$9,557	\$11,084	\$471	(\$9,086)	(\$10,612)
Youthful Offender System	\$25,780	\$21,428	\$68,123	\$42,343	\$46,695
Total	\$46,094,572	\$41,550,090	\$33,920,917	(\$12,173,655)	(\$7,629,172)
Jail	\$7,925,536	\$6,939,586	\$7,257,761	(\$667,775)	\$318,176
Total	\$54,020,108	\$48,489,676	\$41,178,679	(\$12,841,430)	(\$7,310,997)

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 costs are calculated using pre-1352 sentence distributions with post-1352 cases.

This report also examined the impact of H.B.10-1352 on minority overrepresentation. Minority overrepresentation, defined as the presence of minorities in the criminal justice system in numbers

disproportionate to their presence in the population, was found in initial sentences for nearly all sections amended by H.B. 10-1352. Blacks in particular were represented in higher proportions in sentence placements than their presence in the population would predict. However the problem of minority overrepresentation decreased slightly with the passage of H.B. 10-1352, especially for Department of Corrections sentences.

Drug Offender Surcharge

H.B.10-1352 increased Drug Offender Surcharges for Petty Offenses through Felony 4 crime classifications. There were 10,302 offenders in the post-1352 period that were assessed the Drug Offender Surcharge for a total of **\$9,703,249**. It is estimated that had H.B.10-1352 not been enacted the sum assessed by the Drug Offender Surcharge for the post-1352 offenders would have been **\$6,549,425**. The bill's enactment therefore increased the amount imposed by the Drug Offender Surcharge by **\$3,153,824**. These results should be viewed with caution because according to the Office of the State Court Administrator approximately 30% to 35% of the amount assessed is collected by the state on average.

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. The bill lowered the crime classifications for use and possession, 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.).¹ The bill went into effect on August 11, 2010. This final report analyzes the savings realized in first two years following its enactment.²

METHODOLOGY

Data. This report presents findings based on the cost of offenders sentenced in the two-year period after the bill's implementation compared with offenders sentenced in the two years immediately prior. To be included in this analysis, an offender had to commit the offense on or after August 11, 2010 and be charged, convicted, and sentenced on or before August 10, 2012. Cases meeting these same criteria in the prior two years were used as the comparison group. In the tables that follow, the pre-1352 period is labeled '2009-10' and represents the timeframe of August 11, 2008 to August 10, 2010. The post-1352 period is labeled '2011-12' and represents the timeframe of August 11, 2010 to August 10, 2012.

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 from the Department of Corrections (DOC). Sentences to community corrections included direct sentences, but not transition sentences from DOC because these data were not available. Both DOC and community corrections placement dates included the initial placement and any subsequent re-entry resulting from failure or re-programming. These data, plus placement cost per day, were used to develop a model for tracking individual offenders as they progressed through the justice system.

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. In this study the most serious charge was determined by the highest crime classification (felony, misdemeanor, petty offense) of all the conviction charges in the case. In addition, this analysis focused on drug cases which contain charges amended by H.B.10-1352 provisions only. Cases with drug charges not amended by H.B.10-1352 were not included in the study.

¹ The reporting requirement contained in 24-33.5-503(u), C.R.S. was repealed in 2012 by H.B. 12-1310.

² Prior reports analyzed savings from the Office of the State Public Defender as well as sentence placements and the Drug Offender Surcharge. This report focuses on savings generated from sentence placements and the Drug Offender Surcharge only.

Offenders may receive multiple initial sentences (jail as a condition of probation, for example) and/or have their sentence modified at a later date (i.e., probation revocation). Because each placement has a cost impact this analysis attempts to track all sentences for offenders who met the timeframe criteria. H.B.10-1352 calls for the identification of actual savings, so only those savings generated due to placement differences during the first two years of implementation are presented here.

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, in general, there were fewer offenders sentenced in the post-1352 period, and therefore a decline in costs would be expected. The estimation methodology takes the post-1352 offenders, gives them the same proportion of sentence placements (jail, probation, prison, etc.) that the pre-1352 offenders received, and then calculates the costs per day for each offender.³ This approach assumes that the proportions of sentences would stay the same as the previous years, 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.'

Offender race/ethnicity data was obtained for the purpose of evaluating the impact of H.B.10-1352 on Minority Overrepresentation (MOR) in sentence placements.⁴ Minority overrepresentation is defined as the presence of minorities in the criminal justice system in numbers disproportionate to their presence in the population. In Colorado Blacks currently make up four percent of the population and Hispanics account for 21%.⁵ If MOR were not present there would be no more than these proportions of Blacks and Hispanics in each sentence placement. Race/ethnicity was available in court records obtained from the Judicial Branch⁶, but was not present in records from Denver County.

Costs. Offender cost is driven by the sentence placement combined with sentence length. The analytical model used here tracks each sentence placement, duration, and associated costs for each offender in the pre- and post-1352 periods. Appendix A contains the sentence placement costs used in this study. Note that the actual sentence placement costs reported here are based on the time served during the study and comparison periods. If an offender's sentence extended beyond the timeframe, only the days served within the timeframe are counted. The 'Estimated' costs for post-1352 offenders presented here were calculated by estimating (based on the prior 2-year pattern) the sentences that the offenders would have received had H.B.10-1352 not passed and applying a cost per day to those sentences.

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."⁷ Compared to marginal cost, average cost includes fixed expenditures such as buildings and personnel, and

³ A similar approach was used in the cost analysis for Senate Bill 03-318 undertaken by the Division of Probation Services.

⁴ 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.

⁵ Colorado Department of Local Affairs, *2010 Population by Race and Hispanic Origin*, Retrieved from http://dola.colorado.gov/dlg/demog/2010data/race%20and%20hispanic%20origin%20counties_change2000to2010.xls

⁶ 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.

⁷ Wayson, Billy L. and Funke, Gail S. (1989). *What Price Justice? A Handbook for the Analysis of Criminal Justice Costs*. Alexandria, VA: The Institute for Economic and Policy Studies, Inc. Page 98.

would therefore overestimate the savings that occur from housing fewer offenders unless the savings resulted in a facility closure.

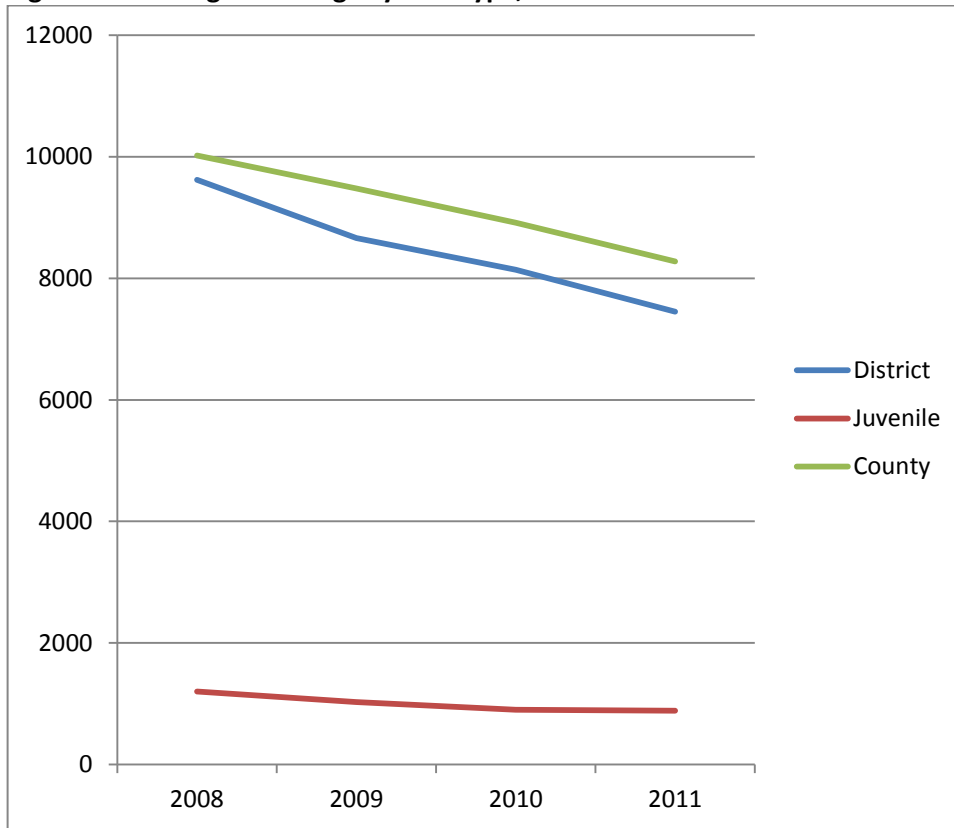
In the placement cost tables, jail is both excluded and included in the total so that the cost to the state versus cost to counties can be compared. Jail costs for all jurisdictions were not available, therefore the daily rate at which the DOC reimburses counties for prisoners being held was used (\$50.44). This amount underestimates the cost for metropolitan counties. For example, Arapahoe County Jail's daily cost is currently \$70.59.⁸

⁸ Email correspondence on 12/19/2012 with Arapahoe County Sheriff Grayson Robinson
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SENTENCE PLACEMENTS

In the past few years filings for drug cases have declined (Figure 1). This study found a similar decline in cases where an H.B.10-1352 charge was the most serious conviction offense. In the two-year period prior to H.B.10-1352 there were **13,006** offenders convicted and sentenced, but in the two years after the bill's enactment that number dropped to **10,891**.

Figure 1. All drug case filings by case type, FY 2008 to FY 2011



Data sources: Compiled from FY 2008-11 Judicial Branch Annual Statistical Reports. Excludes Denver County court filings.

The most serious charge in a case is the charge with the highest felony, misdemeanor, or petty offense class. This charge, among other factors such as criminal history, largely determines the sentence an offender receives. Some of the provisions in H.B. 10-1352 reclassified felony classes to misdemeanors, and higher felony classes down to lower felonies. In the pre-1352 period, felonies comprised 56% of all convictions. That percentage dropped to 51% in the two years following the bill's enactment (Table 3). This finding is important because offenders found guilty of misdemeanor or petty offense crimes are not eligible to be sentenced to the Department of Corrections (DOC) or to community corrections.

Table 3. H.B.10-1352 pre- and post-1352 conviction offense classification: 2 year study period

Class	2009-10		2011-12	
	%	N	%	N
F2	<1%	31	<1%	10
F3	7%	921	5%	591
F4	19%	2,438	11%	1,222
F5	6%	798	6%	614
F6	23%	3,039	29%	3,108
M1	16%	2,115	21%	2,271
M2	<1%	21	5%	494
M3	0%	0	<1%	6
PO2	28%	3,643	24%	2,575
Total	100%	13,006	100%	10,891

Data sources: Judicial Branch and Denver County court records.

With the reclassification of several felony offenses to misdemeanors, the percentage of offenders receiving an initial sentence to the DOC and to community corrections declined in the post-1352 period (Table 4). The proportion of offenders sentenced to DOC declined from 10% to 9% of offenders, and sentences to community corrections declined from 4% to 3% of offenders in the post-1352 years. As a result of more convictions at the misdemeanor level, both jail and probation sentences increased in the post-1352 period (6% to 7% and 41% to 46%, respectively).

An estimated total of 162 DOC sentences were averted with the reduction of felonies to misdemeanors (Table 5). Most of those (107) occurred in section 405, which lowered the Felony 5 classification (F5) to a class 1 Misdemeanor (M1) for possession of a Schedule III or IV drug.

Table 4. H.B.10-1352 pre- and post-1352 initial sentence: 2 year study period

Placement	2009-10		2011-12	
	%	N	%	N
Community Corrections	4%	515	3%	363
Dept of Corrections	10%	1,315	9%	995
Division of Youth Corrections	<1%	35	<1%	22
Electronic Surveillance	<1%	48	<1%	42
Fine Only	23%	3,007	20%	2,165
Intensive Supervision	3%	394	3%	313
Jail	6%	807	7%	742
Jail+Probation/Deferred	6%	837	6%	654
Juvenile Detention	<1%	49	<1%	50
Probation/Deferred	41%	5,375	46%	5,005
Sex Offender ISP	<1%	3	<1%	3
Unsupervised Probation	5%	619	5%	535
Youthful Offender System	<1%	2	<1%	2
Total	100%	13,006	100%	10,891

Data sources: Judicial Branch and Denver County court records.

Table 5. H.B.10-1352 Estimated DOC sentences avoided by statute section: 2 year study period

Statute section	N
18-18-404, C.R.S. Unlawful use of a controlled substance	-16
18-18-405, C.R.S. Unlawful possession of a controlled substance	-107
18-18-406, C.R.S. Offenses relating marijuana and marijuana concentrate	-39
18-18-407, C.R.S. Special Offender	0
18-18-415, C.R.S. Fraud and deceit	0
Total	-162

Data sources: Judicial Branch and Denver County court records.

Offenders serving non-jail sentences in the post-1352 period had an actual cost that was **\$12,173,655** less than offenders who served non-jail sentences in the prior 2-year period (Table 6). When jail was considered, the actual cost was **\$12,841,430** less. However since fewer offenders were convicted in the post-1352 period, a lower cost for that period was to be expected. So to estimate what the cost of offenders would have been had H.B.10-1352 not passed, the cost for post-1352 offender sentences was calculated using the pre-1352 proportions for days served in each placement. Subtracting the estimated cost from the actual cost of post-1352 offenders showed a savings of **\$7,629,172** for non-jail sentences and **\$7,310,997** when Jail sentences were included. The majority of estimated savings came from the more serious sentences associated with felony crimes. For example, DOC placements were **\$5,977,575** lower than the estimated cost for the post-1352 offenders. Community corrections and parole placements also showed reduced costs over the estimated costs for those placements (**-\$736,766** and **-\$610,672**, respectively). However, probation and jail costs were higher than the estimated costs for the post-1352 offenders (**\$124,654** and **\$318,176**, respectively). This was likely the result of the increased proportion of drug crimes that H.B.10-1352 classified as misdemeanors.

Table 6. H.B.10-1352 pre- and post-1352 costs for sentences served: 2 year study period

Placement	Actual 2009-10 (N=13,006)	Estimated* 2011-12 (N=10,891)	Actual 2011-12 (N=10,891)	Actual 2011-12 MINUS Actual 2009-10	Actual 2011-12 MINUS Estimated 2011-12
Community Corrections	\$3,603,684	\$3,290,990	\$2,554,224	(\$1,049,461)	(\$736,766)
Dept of Corrections	\$28,560,094	\$25,843,339	\$19,865,763	(\$8,694,331)	(\$5,977,575)
Division of Youth Corrections	\$2,853,305	\$2,616,561	\$2,240,007	(\$613,298)	(\$376,554)
Electronic Surveillance	\$9,998	\$8,583	\$5,266	(\$4,732)	(\$3,317)
Intensive Supervision	\$1,189,306	\$1,134,041	\$1,008,252	(\$181,054)	(\$125,789)
Juvenile Detention	\$382,671	\$330,343	\$371,107	(\$11,563)	\$40,765
Parole	\$2,130,695	\$2,233,568	\$1,622,896	(\$507,799)	(\$610,672)
Probation/Deferred	\$7,329,482	\$6,060,154	\$6,184,808	(\$1,144,674)	\$124,654
Sex Offender ISP	\$9,557	\$11,084	\$471	(\$9,086)	(\$10,612)
Youthful Offender System	\$25,780	\$21,428	\$68,123	\$42,343	\$46,695
Total	\$46,094,572	\$41,550,090	\$33,920,917	(\$12,173,655)	(\$7,629,172)
Jail	\$7,925,536	\$6,939,586	\$7,257,761	(\$667,775)	\$318,176
Total	\$54,020,108	\$48,489,676	\$41,178,679	(\$12,841,430)	(\$7,310,997)

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 costs are calculated using pre-1352 sentence distributions with post-1352 cases.

Although the number of offenders sentenced in the post-1352 period decreased by 16% from the prior 2 years, the total non-jail cost for those offenders decreased by 26%, and if jail is included, by 24%. There were slight decreases in some placement costs in the post-1352 period, but not large enough to account for the decline of this magnitude (see Appendix A for placement costs). The largest impact on cost came from the reclassification of some felonies to misdemeanors, and from higher felonies to lower felonies. This resulted in fewer offenders being sentenced to the DOC and community corrections.

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

- 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 B).
- 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 69% of offenders in both study and

comparison periods had multiple charges in their case, and more than 10% had multiple cases. 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 records obtained. However, 11% of offenders in the pre-1352 period and 12% of offenders in the post-1352 period had more than one case. For these offenders, only sentences for 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 LAW 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 drug amounts. Finally, the actual and estimated costs of days served in are presented for each sentence placement.

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

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

As a result of these changes to section 404, in the 2-year post-1352 period the percentage of F6 filing charges dropped dramatically and M2 filing charges increased (Table 7). The distribution of conviction charges also showed a downward shift from felonies to misdemeanors (Table 8). In the post-1352 period 98% of offenders were convicted at the M2 level compared to the pre-1352 period in which 81% were convicted at the F6 level. In both the pre- and post-1352 periods more offenders were convicted with section 404 as the most serious charge than were originally filed as the top charge. This likely resulted from more serious charges being dismissed during the plea bargaining process, causing the section 404 charge to become the top charge.

Table 7. H.B.10-1352 Section 404, unlawful use, pre- and post-1352 filing charges by crime classification: 2 year study period

Crime classification	2009-10		2011-12	
	%	N	%	N
F5	3%	6	0%	0
F6	80%	164	1%	2
M1	14%	28	0%	0
M2	4%	8	98%	151
M3	0%	0	1%	1
Total	100%	206	100%	154

Data sources: Judicial Branch and Denver County court records.

Table 8. H.B.10-1352 Section 404, unlawful use, pre- and post-1352 conviction charges by crime classification: 2 year study period

Crime classification	2009-10		2011-12	
	%	N	%	N
F5	<1%	1	0%	0
F6	81%	219	1%	2
M1	17%	47	0%	0
M2	1%	3	98%	320
M3	0%	0	1%	3
Total	100%	270	100%	325

Data sources: Judicial Branch and Denver County court records.

With the reduction of the F6 classification to M2, sentences to DOC and community corrections were not possible in the post-1352 period for section 404 charges. As a result, in the post-1352 period no persons received an initial sentence to DOC compared to 11 in the preceding two-year period (Table 9). More misdemeanor convictions meant that sentences to Jail increased from 7% of offenders to 21% of offenders. However Probation sentences decreased from 59% to 50% of offenders (Table 9).

In the pre-1352 period 5% offenders (11 of 220) received a DOC sentence for the F6 offense. Assuming that 5% of the 325 offenders convicted post-1352 would have received a DOC sentence without H.B.10-1352 means that 16 DOC sentences were averted.

Table 9. H.B.10-1352 Section 404, unlawful use, pre- and post-1352 initial sentence: 2 year study period

Placement	2009-10		2011-12	
	%	N	%	N
Community Corrections	1%	2	<1%	1*
Dept of Corrections	4%	11	0%	0
Electronic Surveillance	0%	0	1%	4
Fine/Comm. Service/Suspended Sentence	8%	22	6%	20
Intensive Supervision	<1%	1	1%	3
Jail	7%	18	21%	68
Jail+Probation/Deferred	11%	30	8%	25
Juvenile Detention	1%	3	1%	2
Probation/Deferred	59%	158	50%	162
Unsupervised Probation	9%	25	12%	40
Total	100%	270	100%	325

Data sources: Judicial Branch and Denver County court records.

*Resulted from a concurrent felony case.

Table 10 shows the cost for days served by offenders in each of the sentence placements. Because more offenders were convicted of section 404 in the post-1352 period (pre-1352: 270, post-1352: 325), a direct comparison of costs between periods is not appropriate. However by comparing the actual cost of post-1352

sentence placements to an estimated cost for those offenders (if H.B.10-1352 not passed) a non-Jail savings of **\$463,854** was found. When jail was included the total savings were less (**\$96,046**), because actual Jail costs were higher than their estimated costs (actual: \$587,576, estimated: \$219,767). Since there were no sentences to DOC that placement cost dropped to \$0 in the post-1352 years compared with an estimated cost of **\$273,040**.

Table 10. H.B.10-1352 section 404, unlawful use, pre- and post-1352 costs for sentences served: 2 year study period

Placement	Actual 2009-10 (N=270)	Estimated* 2011-12 (N=325)	Actual 2011-12 (N=325)	Actual 2011-12 MINUS Actual 2009-10	Actual 2011-12 MINUS Estimated 2011-12
Community Corrections	\$30,293	\$36,477	\$3,995	(\$26,298)	(\$32,482)
Electronic Surveillance	\$0	\$0	\$690	\$690	\$690
Dept of Corrections	\$229,377	\$273,040	\$0	(\$229,377)	(\$273,040)
Division of Youth Corrections**	\$53,485	\$68,486	\$0	(\$53,485)	(\$68,486)
Intensive Supervision	\$6,866	\$8,823	\$9,225	\$2,360	\$402
Juvenile Detention	\$19,519	\$24,511	\$6,910	(\$12,609)	(\$17,602)
Parole	\$24,532	\$33,433	\$0	(\$24,532)	(\$33,433)
Probation/Deferred	\$216,589	\$244,390	\$204,487	(\$12,102)	(\$39,903)
Total	\$580,661	\$689,161	\$225,307	(\$355,354)	(\$463,854)
Jail	\$182,593	\$219,767	\$587,576	\$404,983	\$367,808
Total	\$763,254	\$908,929	\$812,883	\$49,629	(\$96,046)

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 costs are calculated using pre-1352 sentence distributions with post-1352 cases.

**This represents one case and the placement resulted from a probation failure, not an initial sentence.

Minority overrepresentation was not apparent in section 404 sentence placements. As noted above, Black and Hispanic persons currently represent 4% and 21%, respectively, of the Colorado population. By comparison, they were found in 1% (Black) and 11% (Hispanic) of the section 404 sentence placements in both the pre- and post-1352 periods.

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

H.B.10-1352 relocated the act of possession from C.R.S. 18-18-405 to a new section numbered 403.5. ***In this study, data for Section 403.5 was combined 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. In addition, this new section

made the following modifications to possession offenses:

- 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 and IV drugs except Flunitrazepam or Ketamine to an M1. Previously only Schedule V drug possession was classified 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.

The goals for changes to section 405 were to (1) distinguish possession offenses from sale and distribution, and (2) provide for reduced penalties for possession. The post-1352 period showed a decrease in F3 and F4 filing charges and an increase in F6 and M1 charges (Table 11). Similarly, the proportions of F3 and F4 conviction charges decreased in the post-1352 period, while F6 and M1 conviction charges increased (Table 12). Total Felony convictions decreased from 83% to 72%; misdemeanor convictions increased from 17% to 28% in the post-1352 period.

Table 11. H.B.10-1352 Sections 403.5 and 405 pre- and post-1352 original filing charge classification: 2 year study period

Crime Classification	2009-10		2011-12	
	%	N	%	N
F2	3%	385	1%	61
F3	33%	3,688	29%	3,046
F4	23%	2,549	10%	1,064
F5	2%	225	1%	71
F6	39%	4,358	56%	5,870
M1	1%	107	4%	437
M2	<1%	1	<1%	12
Total	100%	11,313	100%	10,561

Data sources: Judicial Branch and Denver County court records.

Table 12. H.B.10-1352 Sections 403.5 and 405 pre- and post-1352 conviction charges by crime classification: 2 year study period

Crime Classification	2009-10		2011-12	
	%	N	%	N
F	0%	0	<1%	2
F2	<1%	30	<1%	10
F3	13%	907	9%	569
F4	26%	1,840	17%	1,093
F5	5%	374	4%	248
F6	38%	2,685	43%	2,800
M1	17%	1,212	28%	1,828
M2	<1%	1	<1%	23
Total	100%	7,049	100%	6,573

Data sources: Judicial Branch and Denver County court records.

Table 13 shows the initial sentences given to offenders for section 403.5 and 405 convictions. Initial sentences to DOC dropped from 17% to 14% in the post-1352 period. Similarly, initial sentences to community corrections declined from 7% to 5%. A large proportion of those declines resulted from changes to paragraphs (2)(A)(II) and (2)(A)(III) which reduced F4 and F5 felonies for Schedule III and IV drugs to an M1. In the pre-1352 period, 6% offenders received a DOC sentence for these offenses at the felony level. A new M1 crime was created by H.B.10-1352 (18-18-403.5(2)(c)) and 1,787 offenders were convicted for this offense. Assuming that 6% of these offenders convicted post-1352 of the M1 offense would have formerly received a DOC sentence, this translates into 107 DOC sentences that were averted.

With a higher proportion of convictions at the misdemeanor level, the percentage of offenders receiving an initial probation sentence increased from 54% to 58% and initial sentences to jail increased from 4% to 6% of sentences (Table 13).

Table 13. H.B.10-1352 Sections 403.5 and 405 pre- and post-1352 initial sentence: 2 year study period

Placement	2009-10		2011-12	
	%	N	%	N
Community Corrections	7%	462	5%	341
Dept of Corrections	17%	1,216	14%	934
Division of Youth Corrections	<1%	23	<1%	16
Electronic Surveillance	<1%	28	<1%	28
Fine/Comm. Service/Suspended Sentence	1%	79	2%	128
Intensive Supervision	5%	331	4%	272
Jail	4%	287	6%	366
Jail+Probation/Deferred	9%	627	8%	525
Juvenile Detention	<1%	24	<1%	27
Probation/Deferred	54%	3,817	58%	3,789
Sex Offender ISP	<1%	3	<1%	2
Unsupervised Probation	2%	151	2%	144
Youthful Offender System	<1%	1	<1%	1
Total	100%	7,049	100%	6,573

Data sources: Judicial Branch and Denver County court records.

The main effects of changes to sections 403.5 and 405 were to lower DOC, parole, and community corrections costs and to increase jail and probation costs. Fewer offenders were convicted of sections 403.5 and 405 in the post-1352 period, so a direction comparison of costs between timeframes is not appropriate (pre-1352: 7,049, post-1352: 6,573). But using the pre-1352 sentences as a guide, it is estimated that the post-1352 offenders would have had a non-jail cost of **\$36,798,350** compared to their actual cost of **\$30,410,373**, resulting in a savings of **\$6,387,977** (Table 14).

The largest difference in actual and estimated costs for section 405 was in DOC placements. The estimated cost for DOC-placed offenders was **\$24,109,574** compared with an actual cost of **\$19,039,426**, resulting in a savings of **\$5,070,148** (Table 14). Actual costs for parole and community corrections were also less than the estimated costs for those placements (parole: -\$568,236, community corrections: -\$579,741).

Post-1352 jail, probation, and juvenile detention actual costs were higher than their estimated costs (Table 14). The actual jail costs for post-1352 were **\$407,807** higher than the estimated cost for those offenders (\$5,615,838 actual vs. \$5,208,031 estimated). Probation placements cost **\$120,603** more than estimated, and juvenile detention cost **\$23,297** more. The increased costs in these placements resulted from the higher proportion of misdemeanor convictions compared to the pre-1352 period.

Table 14. H.B.10-1352 Sections 403.5 and 405 pre- and post-1352 costs for sentences served: 2 year study period

Placement	Actual 2009-10 (N=7,049)	Estimated* 2011-12 (N=6,573)	Actual 2011-12 (N=6,573)	Actual 2011-12 MINUS Actual 2009-10	Actual 2011-12 MINUS Estimated 2011-12
Community Corrections	\$3,203,723	\$2,987,397	\$2,407,656	(\$796,067)	(\$579,741)
Dept of Corrections	\$26,254,352	\$24,109,574	\$19,039,426	(\$7,214,926)	(\$5,070,148)
Division of Youth Corrections	\$1,854,260	\$1,838,099	\$1,602,929	(\$251,331)	(\$235,170)
Electronic Surveillance	\$6,851	\$6,388	\$3,528	(\$3,323)	(\$2,860)
Intensive Supervision	\$992,597	\$977,378	\$865,947	(\$126,650)	(\$111,431)
Juvenile Detention	\$171,101	\$166,293	\$189,590	\$18,489	\$23,297
Parole	\$2,009,112	\$2,122,109	\$1,553,873	(\$455,239)	(\$568,236)
Probation/Deferred	\$5,204,038	\$4,558,600	\$4,679,203	(\$524,836)	\$120,603
Sex Offender ISP	\$9,557	\$11,084	\$98	(\$9,459)	(\$10,985)
Youthful Offender System	\$25,780	\$21,428	\$68,123	\$42,343	\$46,695
Total	\$39,731,371	\$36,798,350	\$30,410,373	(\$9,320,998)	(\$6,387,977)
Jail	\$5,585,171	\$5,208,031	\$5,615,838	\$30,668	\$407,807
Total	\$45,316,542	\$42,006,381	\$36,026,211	(\$9,290,331)	(\$5,980,170)

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 costs are calculated using pre-1352 sentence distributions with post-1352 cases.

Minority overrepresentation was apparent in sections 403.5/405 placements, but the bill's changes acted to reduce the disparity. In the two years prior to H.B. 10-1352's enactment Blacks comprised 16% (N=1,147) of all sentence placements. However that proportion declined to 13% (N=850) in the post-1352 period. Initial sentences to the DOC for Blacks declined from 19% (N=225) to 14% (N=134) in the post-1352 period. Offenders of Hispanic origin comprised 14% (N=981) and 9% (N=622) of the pre- and post-1352 sentence placements, respectively, and thus were not overrepresented in sections 403.5/405.

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

The following 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).
- Increased amounts for possession to 2 to 6 ounces from 1 to 8 ounces, and reduced the classification to an M2 from an M1. The F5 for prior convictions was eliminated.
- Changed the amount of marijuana from more than 8 ounces to between 6 and 12 ounces for the M1 classification, down from F5. The F4 for prior convictions was eliminated.
- 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.

In the post-1352 period, filings for section 406 F4 offenses decreased from 18% to 6%, and filings for F5 and misdemeanors increased: 2% to 11% and 6% to 8%, respectively (Table 15). Felony class 4 conviction charges also dropped as a percent of all charges in the post-1352 period; and F5, M2, and PO2 conviction charges increased (Table 16). However the net effect of these changes was only a small movement in the proportion of felony convictions (16% down to 15%) to misdemeanor and petty offense convictions (84% up to 85%).

Table 15. H.B.10-1352 Section 406 pre- and post-1352, regarding marijuana offenses, original filing charges by crime classification: 2 year study period

Crime Classification	2009-10		2011-12	
	%	N	%	N
F3	<1%	18	1%	66
F4	18%	1,639	6%	473
F5	2%	197	11%	828
F6	<1%	7	1%	71
M1	5%	461	6%	439
M2	<1%	5	2%	183
M3	0%	0	<1%	2
PO2	74%	6,577	73%	5,614
Total	100%	8,904	100%	7,676

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: 2 year study period

Crime Classification	2009-10		2011-12	
	%	N	%	N
F3	<1%	3	<1%	14
F4	11%	587	3%	129
F5	6%	304	10%	364
F6	1%	53	3%	131
M1	16%	856	12%	443
M2	<1%	17	4%	151
M3	0%	0	<1%	3
PO2	67%	3,643	68%	2,575
Total	100%	5,463	100%	3,810

Data sources: Judicial Branch and Denver County court records.

The distribution of initial sentences that resulted from the above convictions looked similar between the pre- and post-1352 periods (Table 17):

- 1% DOC
- 53% Fine/Community Service/Suspended Sentence
- 8-9% Jail
- 23-24% Probation

One significant change to section 406 reduced the F5 for possession of more than 8 ounces to an M1 for possession of 6 to 12 ounces. Therefore in the post-1352 period, DOC and community corrections sentences were not available for this offense. In the pre-1352 period 12% offenders (35 of 290) received a DOC sentence for this offense at the felony level. In the post-1352 period 327 offenders were convicted for this offense at the M1 level. Assuming that 12% of offenders convicted post-1352 of the M1 offense would have received a DOC sentence without H.B.10-1352 means that 39 DOC sentences were averted.

Table 17. H.B.10-1352 Section 406, regarding marijuana, pre- and post-1352 initial sentence: 2 year study period

Placement	2009-10		2011-12	
	%	N	%	N
Community Corrections	1%	39	<1%	15
Dept of Corrections	1%	65	1%	43
Division of Youth Corrections	0%	11	<1%	6
Electronic Surveillance	0%	20	<1%	9
Fine/Comm. Service/Suspended Sentence	53%	2,905	53%	2,017
Intensive Supervision	1%	52	1%	33
Jail	9%	482	8%	300
Jail+Probation/Deferred	3%	167	2%	95
Juvenile Detention	0%	22	1%	21
JV Work (Denver)	0%	19	0%	8
Probation/Deferred	23%	1,246	24%	921
Sex Offender ISP	0%	0	0%	1
Unsupervised Probation	8%	435	9%	341
Total	100%	5,463	100%	3,810

Data sources: Judicial Branch and Denver County court records.

As noted above the proportion of felonies to misdemeanors changed slightly from the pre- to the post-1352 period. The estimated cost savings for section 406 resulted from fewer DOC and jail days served (Table 18). The actual cost for DOC placements post-1352 was **\$723,539** while the estimated cost for those offenders was **\$1,224,463**, which resulted in an estimated savings of **\$500,924**. Actual post-1352 jail costs were **\$454,817** lower than estimated (\$1,009,052 actual vs. \$1,463,870 estimated). Two sentence placements, probation and juvenile detention, showed higher actual costs than their estimates. Probation costs were **\$48,852** more than estimated and juvenile detention costs were **\$35,069** more. The total estimated non-jail savings for this section was **\$519,608**; including jail the estimated savings was **\$974,426**.

Table 18. H.B.10-1352 Section 406, concerning marijuana penalties, pre- and post-1352, costs of sentences served: 2 year study period

Placement	Actual 2009-10 (N=5,463)	Estimated* 2011-12 (N=3,810)	Actual 2011-12 (N=3,810)	Actual 2011-12 MINUS Actual 2009-10	Actual 2011-12 MINUS Estimated 2011-12
Community Corrections	\$290,635	\$202,708	\$122,806	(\$167,829)	(\$79,902)
Dept of Corrections	\$1,782,360	\$1,224,463	\$723,539	(\$1,058,821)	(\$500,924)
Division of Youth Corrections	\$876,691	\$650,240	\$637,078	(\$239,613)	(\$13,163)
Electronic Surveillance	\$3,147	\$2,194	\$863	(\$2,284)	(\$1,332)
Intensive Supervision	\$156,450	\$119,268	\$115,327	(\$41,123)	(\$3,940)
Juvenile Detention	\$192,051	\$139,539	\$174,608	(\$17,444)	\$35,069
Parole	\$87,595	\$69,190	\$64,547	(\$23,048)	(\$4,643)
Probation/Deferred	\$1,699,247	\$1,096,003	\$1,144,855	(\$554,391)	\$48,852
Sex Offender ISP	\$0	\$0	\$373	\$373	\$373
Total	\$5,088,174	\$3,503,604	\$2,983,996	(\$2,104,178)	(\$519,608)
Jail	\$2,099,010	\$1,463,870	\$1,009,052	(\$1,089,958)	(\$454,817)
Total	\$7,187,184	\$4,967,474	\$3,993,048	(\$3,194,136)	(\$974,426)

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 costs are calculated using pre-1352 sentence distributions with post-1352 cases.

Minority overrepresentation was apparent in section 406 sentence placements. In particular, Blacks and Hispanics made up 23% (N=15) and 25% (N=16), respectively, of initial sentences to DOC. The provisions of H.B.10-1352 had a beneficial effect on those proportions, dropping them to 19% for Blacks (N=8) and 9% for Hispanics (N=4) in the post-1352 years. The number of offenders affected was small, but the trend was in the right direction.

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

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

There were 598 offenders charged with section 407 in the pre-1352 period and 384 offenders in the post-1352 period. The Special Offender statute is often dismissed during the plea bargaining process, consequently only 13 offenders in the pre-1352 period and 11 offenders in the post-1352 period had the Special Offender charges proven. The Special Offender statute calls for a sentence to the Department of Correction so most offenders in both periods were sentenced to the DOC (Table 19). The actual cost of sentences served by the pre-1352 offenders was **\$169,479** and the post-1352 offenders cost was **\$137,135**.

The Special Offender statute paragraphs that were changed by H.B.10-1352 were charged less often in the post-1352 period than the prior two years (384 post-1352 vs. 598 pre-1352). The percentage of offenders charged with section 407 declined to 2% of all drug offenders in the post-1352 period from 3% in the prior period. However it is not clear if the H.B.10-1352 changes to section 407 were the cause of this decline or if there were other factors at work. In addition, the role that the Special Offender statute plays in the plea bargain process makes it difficult to estimate what the cost for offenders would have been if H.B.10-1352 had not passed. Consequently no cost savings were estimated for this section.

Table 19. H.B.10-1352 Section 407, designating a Special Offender, pre- and post-1352 initial sentence: 2 year study period

Placement	2009-10		2011-12	
	N	%	N	%
Community Corrections	8%	1	0%	0
Dept of Corrections	85%	11	91%	10
Youthful Offender System	8%	1	9%	1
Total	100%	13	100%	11

Data sources: Judicial Branch and Denver County court records.

C.R.S. 18-18-415, 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.

In the post-1352 period more offenders had a section 415 charge as their most serious filing offense than in the prior two years (327 post-1352 vs. 294 pre-1352). However that trend was reversed for conviction charges: fewer offenders were convicted of section 415 in the post-1352 period (172 post-1352 vs. 211 pre-1352).

Tables 20 and 21 show the downward shift from F5 to F6 for both filing and conviction charges resulting from H.B.10-1352 changes to this section. In the post-1352 period 99% of offenders were convicted at the F6 level compared to 38% in the prior two years.

The resulting sentences received by offenders in the post-1352 period (Table 22) showed a higher percentage of Probation (77% post-1352 vs. 73% pre-1352). Placements to DOC and community corrections decreased slightly (DOC: 6% to 5%, community corrections: 5% to 3%). Changes to section 415 did not reduce felony charges to misdemeanors so there were no direct DOC sentences averted.

Table 20. H.B.10-1352 Section 415 pre- and post-1352, regarding fraud and deceit offenses, original filing charges by crime classification: 2 year study period

Crime Classification	2009-10		2011-12	
	%	N	%	N
F4	6%	18	0%	0
F5	66%	193	<1%	1
F6	28%	83	<100%	326
Total	100%	294	100%	327

Data sources: Judicial Branch and Denver County court records.

Table 21. H.B.10-1352 Section 415, concerning fraud and deceit, pre- and post-1352 conviction charges by crime classification: 2 year study period

Crime Classification	2009-10		2011-12	
	%	N	%	N
F4	5%	11	0%	0
F5	56%	119	1%	1
F6	38%	81	99%	171
Total	100%	211	100%	172

Data sources: Judicial Branch and Denver County court records.

Table 22. H.B.10-1352 Section 415, regarding fraud and deceit, pre- and post-1352 initial sentence: 2 year study period

Placement	2009-10		2011-12	
	%	N	%	N
Community Corrections	5%	11	3%	6
Dept of Corrections	6%	12	5%	8
Division of Youth Corrections	<1%	1	0%	0
Electronic Surveillance	0%	0	1%	1
Fine/Comm. Service/Suspended Sentence	<1%	1	0%	0
Intensive Supervision	5%	10	3%	5
Jail	<1%	1	0%	0
Jail+Probation/Deferred	6%	13	5%	9
Probation/Deferred	73%	154	77%	133
Unsupervised Probation	4%	8	6%	10
Total	100%	211	100%	172

Data sources: Judicial Branch and Denver County court records.

As noted in the sections above, because fewer offenders were convicted in the post-1352 period, a direct comparison of costs between periods is not appropriate. However when the estimated cost for post-1352 offenders is compared with their actual cost, an estimated non-jail savings of **\$257,733** was realized (Table 23). Including jail placements increased the estimated savings to **\$260,356**. The majority of the cost savings resulting from changes to Section 415 were from DOC days served. The actual cost for DOC placements was

\$133,464 lower than the estimated cost for post-1352 offenders (\$102,798 actual vs. \$236,262 estimated).

Table 23. H.B.10-1352 Section 415, concerning fraud and deceit penalties, pre- and post-1352, costs of sentences served: 2 year study period

Placement	Actual 2009-10 (N=211)	Estimated* 2011-12 (N=172)	Actual 2011-12 (N=172)	Actual 2011-12 MINUS Actual 2009-10	Actual 2011-12 MINUS Estimated 2011-12
Community Corrections	\$79,034	\$64,408	\$19,767	(\$59,266)	(\$44,641)
Dept of Corrections	\$294,005	\$236,262	\$102,798	(\$191,207)	(\$133,464)
Electronic Surveillance	\$0	\$0	\$185	\$185	\$185
Division of Youth Corrections	\$68,869	\$59,735	\$0	(\$68,869)	(\$59,735)
Intensive Supervision	\$33,394	\$28,572	\$17,753	(\$15,641)	(\$10,820)
Parole	\$9,456	\$8,836	\$4,476	(\$4,980)	(\$4,360)
Probation/Deferred	\$209,608	\$161,161	\$156,263	(\$53,345)	(\$4,898)
Total	\$694,365	\$558,974	\$301,242	(\$393,124)	(\$257,733)
Jail	\$58,763	\$47,918	\$45,295	(\$13,467)	(\$2,623)
Total	\$753,128	\$606,892	\$346,537	(\$406,591)	(\$260,356)

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 costs are calculated using pre-1352 sentence distributions with post-1352 cases.

Minority overrepresentation worsened for the Black population sentenced under section 415 but the number of offenders affected was small. The percentage of Blacks in all sentence placements increased from 2% (N=5) to 8% (N=13) in the post-1352 period. One person received an initial sentence to the DOC in the post-1352 period while none had received a DOC sentence in the prior 2 years.

C.R.S. 18-19-103, 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.

The Drug Offender Surcharge was assessed on 11,161 offenders in the pre-1352 period and to 10,302 offenders post-1352 (

Table 24).⁹ Although there were fewer offenders who were assessed the surcharge in the two years after the bill was enacted, the changes to C.R.S. 18-19-103 increased the amount assessed to them, resulting in a higher total amount than the previous two years (\$9,703,249 vs. \$7,149,651). If H.B.10-1352 had not been enacted, it is estimated that the same number of post-1352 offenders would have been assessed \$6,549,425. The net increase resulting from H.B.10-1352 was therefore \$3,153,824 for the 2-year period following the bill's enactment. These results should be reviewed with caution because according to the Office of the State Court Administrator on average 30% to 35% of the amount assessed is collected by the state¹⁰.

Table 24. Pre- and post-1352 Drug Offender Surcharge, assessed: 2 year study period

Class	2009-10		2011-12		Assessed 2011-12 MINUS 2009-10	Estimated* 2011-12	Actual 2011-12 MINUS Estimated 2011-12
	2009-10 Assessed*	N	2010-12 Assessed*	N			
F4	\$2,994,450	2,062	\$2,328,800	1,192	(\$665,650)	\$1,788,000	\$540,800
F5	\$806,684	737	\$817,525	553	\$10,841	\$622,125	\$195,400
F6	\$1,856,592	2,539	\$3,724,174	3,092	\$1,867,582	\$2,319,000	\$1,405,174
M	\$7,664	32	\$2,677	5	(\$4,987)	\$3,000	(\$323)
M1	\$1,093,777	1,865	\$2,181,478	2,245	\$1,087,701	\$1,347,000	\$834,478
M2	\$11,815	28	\$242,795	423	\$230,980	\$190,350	\$52,445
M3	\$2,600	6	\$1,800	6	(\$800)	\$1,350	\$450
PO	\$190	2	\$0	0	(\$190)	\$0	\$0
PO1	\$850	2	\$0	0	(\$850)	\$0	\$0
PO2	\$375,029	3,888	\$404,000	2,786	\$28,971	\$278,600	\$125,400
Total	\$7,149,651	11,161	\$9,703,249	10,302	\$2,553,598	\$6,549,425	\$3,153,824

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

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

There was minority overrepresentation present in the population that was assessed the Drug Offender Surcharge. Using records in which race/ethnicity information was present,¹¹ Blacks were assessed 16% (\$1,129,390) of the total amount (\$6,970,877) in the pre-1352 period. However that figure declined to 13% (\$1,266,535) of the total amount (\$9,645,301) in the post-1352 period. At the same time, assessments to Whites increased from 70% (\$4,858,294) to 76% (\$7,369,379) of the total. Only the F5 classification showed a worsening in overrepresentation for Blacks, by increasing from 16% (\$132,300) of the total to 18% (\$149,075). The assessments to the Hispanic population in the pre- and post-1352 periods did not show overrepresentation (12% and 8%, respectively).

⁹ The drug offender surcharge was waived for 5% (N=630) of offenders in the 2009-10 period and 5% (N=569) of offenders in 2011-12 period.

¹⁰ Email correspondence on 1/23/2013 with Paul Litschewski, Financial Services Manager, Office of the State Court Administrator

¹¹ Denver County court records did not contain race/ethnicity information.

SUMMARY

The changes contained in H.B.10-1352 have resulted in an estimated non-jail savings of **\$7,629,172** over the two-year period since its enactment. When jail costs are included the savings drops to **\$7,310,997** because jail costs increased by an estimated **\$318,176** in the post-1352 period. The majority of savings occurred from DOC and community corrections sentences averted as a result of the reduction of felony classes to misdemeanors. The greatest numbers of offenders affected by this change were those with Schedule III and IV possession charges.

H.B.10-1352's increase of fees in the Drug Offender Surcharge resulted in an additional **\$3,153,824** being assessed for the two years post-1352. This amount should be viewed with caution since on average the state collects 30% to 35% of the amount assessed. Minority overrepresentation was apparent in assessments of the Drug Offender Surcharge, particularly for Black offenders, but improved with the enactment of H.B.10-1352. In the pre-1352 years Blacks accounted for 16% of assessments; in the post-1352 years that declined to 13% of the total amount assessed.

The problem of minority overrepresentation was found in sentence placements in 4 of the 5 sections examined. Blacks in particular were represented in higher proportions in sentence placements than their presence in the population would predict. However the problem of minority overrepresentation decreased slightly with the passage of H.B. 10-1352. For example in section 405 in the two years prior to H.B. 10-1352's enactment Blacks comprised 16% of all sentence placements. That proportion declined to 13% in the post-1352 period. Initial sentences to the DOC for Blacks declined from 19% to 14% in the post-1352 period. In section 406 initial sentence placements for Blacks and Hispanics made up 23% and 25% respectively, of initial sentences to DOC. In the post-1352 years those proportions dropped to 19% for Blacks and 9% for Hispanics. There was no evidence of minority overrepresentation in section 404; however minority overrepresentation worsened for the Black population sentenced under section 415. In this section the number of offenders affected was small but the percentage of Blacks in all sentence placements increased from 2% to 8% in the post-1352 period.

APPENDIX A – SENTENCE PLACEMENTS COST PER DAY

Table 25. Daily Cost of Probation

Type of supervision	FY 2009*	FY 2010	FY 2011	FY 2012
Adult regular	\$4.08	\$4.08	\$3.88	\$3.82
Juvenile regular	\$4.45	\$4.45	\$4.36	\$4.73
Adult intensive supervision	\$10.71	\$10.71	\$11.94	\$10.54
Juvenile intensive supervision	\$9.74	\$9.74	\$14.74	\$17.59
Sex Offender ISP	\$8.72	\$8.72	\$10.54	\$11.15

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

*FY 2010 rate used for FY 2009

Table 26. Daily Cost of the Colorado Department of Corrections

Type of supervision	FY 2009	FY 2010	FY 2011	FY 2012
Parole (average cost)	\$19.53	\$18.95	\$20.14	\$23.28
Private prison*	\$54.93	\$52.69*	\$52.69*	\$52.69*
Youthful Offender System	\$207.84	\$193.46	\$169.51	\$173.34

Data sources: Colorado Department of Corrections, Office of Planning & Analysis, *Statistical Report, Fiscal Year(s) 2009,2010,2011*. FY 2012 daily costs obtained from email correspondence with Deb Kugler, Budget Manager, Department of Corrections.

*Private prison cost used to estimate DOC marginal cost.

Table 27. Daily Cost of the Division of Youth Corrections Placements

Type of supervision	FY 2009*	FY 2010	FY 2011	FY 2012
Detention	\$153.69	\$153.69	\$155.89	\$164.52
Commitment	\$178.88	\$178.88	\$188.54	\$191.94

Data source: Division of Youth Corrections.

*FY 2010 rate used for FY 2009

Daily Cost of Community Corrections FY 2009 – 2012: \$37.74¹² (Data source: Division of Criminal Justice, Office of Community Corrections).

Daily Jail costs FY 2009 – 2012: \$50.44 per day (Department of Corrections reimbursement rate).

¹² This rate represents the standard residential rate. Some offender rates are higher depending on their criminal history, risk, and needs. For example the daily rate for residential dual diagnosis treatment is \$70.76.

APPENDIX B – SENTENCING RANGES

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 months	12 years	3 years
Extraordinary Risk Crime	2 years \$2000 fine	8 years \$500,000	12 months	16 years	3 years
5	12 months \$1000 fine	3 years \$100,000	6 months	6 years	2 years
Extraordinary Risk Crime	12 months \$1000 fine	4 years \$100,000	6 months	8 years	2 years
6	12 months \$1000 fine	18 months \$100,000 fine	6 months	3 years	12 months
Extraordinary Risk Crime	12 months \$1000 fine	2 years \$100,000	6 months	4 years	12 months

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