



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2027 Biennium

Bill#/Title: HB0542.01: Revise DUI offense penalties for third offense to be a felony

Primary Sponsor: Steven Kelly Status: As Introduced

☐ Included in the Executive Budget ☒ Needs to be included in HB 2 ☐ Significant Local Gov Impact

☐ Significant Long-Term Impacts ☐ Technical Concerns ☐ Dedicated Revenue Form Attached

### FISCAL SUMMARY

	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>	<u>FY 2028</u> <u>Difference</u>	<u>FY 2029</u> <u>Difference</u>
<b>Expenditures</b>				
General Fund (01)	\$4,336,373	\$6,256,056	\$7,031,075	\$7,807,222
<b>Revenues</b>				
General Fund (01)	\$0	\$0	\$0	\$0
<b>Net Impact</b>	<u>(\$4,336,373)</u>	<u>(\$6,256,056)</u>	<u>(\$7,031,075)</u>	<u>(\$7,807,222)</u>
<b>General Fund Balance</b>				

### Description of fiscal impact

HB 542 revises penalties for driving under the influence (DUI), resulting incarceration and treatment program costs for the Department of Corrections.

### FISCAL ANALYSIS

#### Assumptions

#### Department of Corrections (DoC)

1. HB 542 amends the current DUI statute 61-8-1002, MCA, changing jail time for first and second offenses and removing the third offense. HB 542 then adds the third offense DUI to 61-8-1008, MCA, making it a felony which carries a sentence of no less than 13 months or more than two (2) years to the DoC for placement in either an appropriate correctional facility or a program, followed by a consecutive term of five (5) years to the Montana state prison or the Montana women's prison, all of which must be suspended or a term of up to five (5) years in an appropriate treatment court program, both with corresponding fines. The court shall order that if the person successfully completes a residential alcohol treatment program approved by the DoC, the remainder of the 13-month to 2-year term must be served on probation. This change will result in increased costs to the DoC.
2. The DoC calculated the average number of misdemeanor 3rd time DUI convictions to be 213. This is the potential number of new felony convictions to the DoC.
3. Using the sentencing information for 4th time felony DUI's over the last calendar year, DoC calculated that the type of sentencing was allocated as follows:
  - a. Prison - 12%
  - b. Treatment (six (6) months and then probation for seven (7) months) - 49%
  - c. Probation - 39%
4. DoC assumes those sentenced to treatment would be sentenced to six (6) months in treatment and then seven (7) months on probation for a total sentence of 13 months.

5. The average caseload for a Probation & Parole Officer is approximately 65 offenders. The DoC assumes it will need at 3.00 FTE in FY 2026 for the supervision of the additional offenders. The DoC will require an additional 4.00 FTE for FY 2027, FY 2028 and FY 2029 for a total of seven 7.00 FTE on-going after that.
6. Assuming the above percentages, in FY 2026, 25 offenders would be sentenced to prison costing \$839,500 (25 offenders x \$92 day x 365 days), 105 would be sent to treatment for six months costing \$2,586,938 (105 offenders x \$135 day x 183 days) and 83 would be sentenced direct to probation and the 105 offenders in treatment would spend six (6) months on probation costing \$444,645 ((83 offenders x \$9 day x 365 days) + (105 offenders x \$9 day x 182 days)) and 3.00 FTE for \$217,251, for a total of \$4,088,333.
7. In FY 2027 it would be 50 in prison costing \$1,679,000 (50 offenders x \$92 day x 365 days), treatment would be \$2,586,938 (105 offenders x \$135 day x 183 days) and probation would be \$1,235,160 ((166 offenders x \$9 day x 365 days) + (210 offenders x \$9 day x 365 days)), with 7.00 FTE at \$506,918 for a total of \$6,008,016.
8. Assuming a 1.5% inflation factor, and assuming the same rates of incarceration, FY 2028 would be \$6,779,314 and FY 2029 would be \$7,551,685.

**Department of Justice**

9. It is not possible to project the increase in DUI appeal cases the Appellate Services Bureau would experience due to HB 542 revisions, nor to gauge the potential fiscal impact.
10. The Prosecution Services Bureau (PSB) handles a limited number of DUI felony cases. HB 542 may result in a slight increase in cases, about one or two per year, that would normally be misdemeanors but would be felonies under HB 542. It is assumed that there would be a minimal fiscal impact on the PSB.

**Judiciary**

11. HB 542 revises the penalties for second, third, and subsequent driving under the influence offenses.
12. The bill does not create new crimes or establish new hearings that would impact district court workload. As such, there is no fiscal impact to the Judicial Branch related to this bill.

**Public Defender (OPD)**

13. OPD assumes that HB 542's elevating of third offense DUIs from misdemeanors to felonies would increase the case weight hours by 8 hours (from 7 to 15 hours) for matters in which the controlling (most serious) charge for case weight purposes is a third offense DUI.
14. OPD assumes no increase in case weight for those cases that contain a third offense DUI in addition to some other charge that already has a case weight of at least 15 hours, such as a felony drug possession or criminal endangerment.
15. OPD also assumes no increase in case weight hours for first and second offense DUIs as they would remain misdemeanors.
16. Based on FY 2024, OPD assumes it will be appointed to 318 third offense DUIs per year where the third offense DUI is the most serious charge and, thus, the controlling charge for assigning case weight.
17. Because OPD's FTE staff is already working at capacity, OPD assumes any increase in the work to which OPD is appointed would be handled by contract public defenders.
18. OPD assumes the cost of representation by contract public defenders would be \$97.50 per hour (\$90 per hour professional services rate plus average travel expenses of \$7.50 per case hour).
19. OPD, therefore, assumes the total impact of HB 542 on OPD would be \$248,040 per year: 318 cases per year in which felony, third offense DUI would be the most serious, controlling charge times 8 additional hours per such case times \$97.50 per hour.
20. OPD assumes 1.5% inflation in FY 2028 and FY 2029.

## Fiscal Analysis Table

**Department of Corrections**

	<b>FY 2026 Difference</b>	<b>FY 2027 Difference</b>	<b>FY 2028 Difference</b>	<b>FY 2029 Difference</b>
<b><u>Fiscal Impact</u></b>				
FTE	3.00	7.00	7.00	7.00
<b>TOTAL Fiscal Impact</b>	<b>3.00</b>	<b>7.00</b>	<b>7.00</b>	<b>7.00</b>
<b><u>Expenditures</u></b>				
Personal Services	\$217,251	\$506,918	\$514,522	\$522,240
Operating Expenses	\$3,871,082	\$5,501,098	\$6,264,792	\$7,029,445
<b>TOTAL Expenditures</b>	<b>\$4,088,333</b>	<b>\$6,008,016</b>	<b>\$6,779,314</b>	<b>\$7,551,685</b>
<b><u>Funding of Expenditures</u></b>				
General Fund (01)	\$4,088,333	\$6,008,016	\$6,779,314	\$7,551,685
<b>TOTAL Funding of Expenditures</b>	<b>\$4,088,333</b>	<b>\$6,008,016</b>	<b>\$6,779,314</b>	<b>\$7,551,685</b>
<b><u>Revenues</u></b>				
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures)</u></b>				
General Fund (01)	(\$4,088,333)	(\$6,008,016)	(\$6,779,314)	(\$7,551,685)

**Public Defender**

	<b>FY 2026 Difference</b>	<b>FY 2027 Difference</b>	<b>FY 2028 Difference</b>	<b>FY 2029 Difference</b>
<b><u>Fiscal Impact</u></b>				
<b><u>Expenditures</u></b>				
Operating Expenses	\$248,040	\$248,040	\$251,761	\$255,537
<b>TOTAL Expenditures</b>	<b>\$248,040</b>	<b>\$248,040</b>	<b>\$251,761</b>	<b>\$255,537</b>
<b><u>Funding of Expenditures</u></b>				
General Fund (01)	\$248,040	\$248,040	\$251,761	\$255,537
<b>TOTAL Funding of Expenditures</b>	<b>\$248,040</b>	<b>\$248,040</b>	<b>\$251,761</b>	<b>\$255,537</b>
<b><u>Revenues</u></b>				
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures)</u></b>				
General Fund (01)	(\$248,040)	(\$248,040)	(\$251,761)	(\$255,537)

**STATEWIDE SUMMARY**

	<b>FY 2026 Difference</b>	<b>FY 2027 Difference</b>	<b>FY 2028 Difference</b>	<b>FY 2029 Difference</b>
<b><u>Fiscal Impact</u></b>				
FTE	3.00	7.00	7.00	7.00
<b>TOTAL Fiscal Impact</b>	<b>3.00</b>	<b>7.00</b>	<b>7.00</b>	<b>7.00</b>
<b><u>Expenditures</u></b>				
Personal Services	\$217,251	\$506,918	\$514,522	\$522,240
Operating Expenses	\$4,119,122	\$5,749,138	\$6,516,553	\$7,284,982
<b>TOTAL Expenditures</b>	<b>\$4,336,373</b>	<b>\$6,256,056</b>	<b>\$7,031,075</b>	<b>\$7,807,222</b>

**Funding of Expenditures**

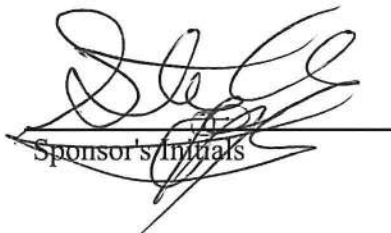
General Fund (01)	<u>\$4,336,373</u>	<u>\$6,256,056</u>	<u>\$7,031,075</u>	<u>\$7,807,222</u>
<b>TOTAL Funding of Expenditures</b>	<b><u>\$4,336,373</u></b>	<b><u>\$6,256,056</u></b>	<b><u>\$7,031,075</u></b>	<b><u>\$7,807,222</u></b>

**Revenues**

<b>TOTAL Revenues</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>
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**Net Impact to Fund Balance (Revenue minus Funding of Expenditures)**

General Fund (01)	<u>(\$4,336,373)</u>	<u>(\$6,256,056)</u>	<u>(\$7,031,075)</u>	<u>(\$7,807,222)</u>
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Sponsor's Initials

2-26-25

Date



Budget Director's Initials

2/25/2025

Date