



Fiscal Note

Legislative Council Staff

Nonpartisan Services for Colorado’s Legislature

SB 25-044: SYNTHETIC OPIATES CRIMINAL PENALTIES

Prime Sponsors:

Sen. Pelton B.
Rep. Armagost

Fiscal Analyst:

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Bill Outcome: Postponed Indefinitely

Drafting number: LLS 25-0033

Version: Final Fiscal Note

Date: June 9, 2025

Fiscal note status: This fiscal note reflects the introduced bill. This bill was postponed indefinitely by the Senate Judiciary Committee on February 10, 2025; therefore, the impacts identified in this analysis do not take effect.

Summary Information

Overview. The bill would have increased penalties for certain offenses related to synthetic opiates.

Types of impacts. The bill was projected to affect the following areas on an ongoing basis:

- State Revenue
- State Expenditures
- TABOR Refunds
- Local Government

Appropriations. For FY 2025-26, the bill would have required an appropriation of \$1.1 million to multiple departments.

Table 1
State Fiscal Impacts

Type of Impact ¹	Budget Year FY 2025-26	Out Year FY 2026-27
State Revenue	\$39,033	\$122,541
State Expenditures	\$1,293,294	\$4,681,853
Transferred Funds	\$0	\$0
Change in TABOR Refunds	\$39,033	\$122,541
Change in State FTE	10.9 FTE	11.7 FTE

¹ Fund sources for these impacts are shown in the tables below.

**Table 1A
State Revenue**

Fund Source	Budget Year FY 2025-26	Out Year FY 2026-27
General and Cash Funds	\$39,033	\$122,541
Total Revenue	\$39,033	\$122,541

**Table 1B
State Expenditures**

Fund Source	Budget Year FY 2025-26	Out Year FY 2026-27
General Fund	\$1,069,077	\$4,441,647
Cash Funds	\$0	\$0
Federal Funds	\$0	\$0
Centrally Appropriated	\$224,217	\$240,206
Total Expenditures	\$1,293,294	\$4,681,853
Total FTE	10.9 FTE	11.7 FTE

Summary of Legislation

The bill increases the penalties for distributing, manufacturing, dispensing, selling, and possessing fentanyl, carfentanil, and benzimidazole opiate (synthetic opiates).

Unlawful Distribution, Manufacturing, Dispensing, or Sale

The bill makes distribution, manufacturing, dispensing, or sale of synthetic opiates a level 1 drug felony. Currently, this offense is classified as follows:

- a level 1 drug felony if the distribution, manufacturing, dispensing, or sale is of more than 50 grams of a substance with a synthetic opiate, or if someone died in relation to the distribution;
- a level 2 drug felony for if the distribution, manufacturing, dispensing, or sale is of between 4 and 50 grams of a substance that contains a synthetic opiate; or
- a level 3 drug felony for if the distribution, manufacturing, dispensing, or sale is of less than 4 grams of a synthetic opiate.

The bill also removes the immunity from criminal prosecution for the proximate cause of death if the individual reports the overdose to authorities.

Under current law, defendants convicted of a level 1 drug felony must be sentenced to a term of between 8 and 32 years. However, if the defendant is convicted of a level 1 drug felony of unlawful distribution manufacturing, dispensing, or sale of a substance with a synthetic opiate

and has been found to cause the proximate death of an individual, the defendant must be sentenced to 12 to 32 years. The bill removes this aggravating circumstance.

Possession of Synthetic Opiate

The bill makes possession of a substance with a synthetic opiate a level 4 drug felony. Currently, possession of a substance with a synthetic opiate is classified as follows:

- a level 4 drug felony if a person possesses between 1 and 4 grams of a substance with a synthetic opiate in it; or
- a level 1 drug misdemeanor if a person possesses less than a gram of a substance that has a synthetic opiate in it, or if the defendant establishes they did not know a controlled substance had a synthetic opiate.

Additionally, the bill removes the possibility of vacating a felony for possession of a synthetic opiate.

Comparable Crime Analysis

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or creates a new factual basis for an existing crime. The following section outlines crimes that are comparable to the offense in this bill and discusses assumptions on future rates of criminal convictions resulting from the bill. Because this offense was recently reclassified, only two years of data are available.

Unlawful Distribution, Manufacturing, Dispensing, or Sale

This bill reclassifies the existing offense of unlawful distribution, manufacturing, dispensing, or sale of less than 50 grams of a synthetic opiate from a level 2 or 3 drug felony to a level 1 drug felony. From FY 2022-23 to FY 2023-24:

- an average of 143 individuals per year (286 total) have been convicted and sentenced for the level 2 felony drug offense. Of the persons convicted, 234 were male, and 52 were female. Demographically, 233 were White, 24 were Black/African American, 17 were Hispanic, 1 was Asian, 3 were American Indian, and 8 were classified as "Other."
- an average of 154 individuals per year (307 total) have been convicted and sentenced for the level 3 felony drug offense. Of the persons convicted, 227 were male, and 80 were female. Demographically, 237 were White, 47 were Black/African American, 14 were Hispanic, 4 were Asian, 1 was American Indian, and 4 were classified as "Other."

This bill also removes the enhanced sentencing for aggravating circumstances for the level 1 drug felony of unlawful distribution, manufacturing, dispensing, or sale of more than 50 grams of a synthetic opiate. From FY 2022-23 to FY 2023-24:

- an average of 40 individuals per year (81 total) have been convicted and sentenced for this offense. Of the persons convicted, 73 were male, and 8 were female. Demographically, 69 were White, 3 were Black/African American, 7 were Hispanic, and 1 did not have a race

identified. It is unknown how many of these sentences include a sentence enhancer due to the aggravating circumstance of causing death.

Possession of Synthetic Opiate

This bill reclassifies the existing offenses of unlawful possession of less than a gram of a substance with a synthetic opiate, and possession of 1 to 4 grams of a substance with a synthetic opiate where the defendant was unaware from a level 1 drug misdemeanor to a level 4 drug felony. From FY 2022-23 to FY 2023-24:

- an average of 716 individuals per year (1,431 total) have been convicted and sentenced for possession of less than a gram of a substance with an opiate offense. Of the persons convicted, 980 were male, 447 were female, and 4 did not have a gender identified. Demographically, 1,209 were White, 129 were Black/African American, 48 were Hispanic, 8 were Asian, 14 were American Indian, 18 were classified as "Other," and 5 did not have a race identified.
- an average of 28 individuals per year (56 total) have been convicted of possessing 1 to 4 grams of a substance with a synthetic opiate in it, and did not know the substance contained a synthetic opiate. Of the persons convicted, 36 were male, 19 were female, and 1 did not have a gender identified. Demographically, 49 were White, 3 were Black/African American, 3 were Hispanic, and 1 was classified as "Other."

Assumptions

The bill impacts the criminal justice in three ways. Assumptions for each of these impacts are outlined below.

- First, it will increase the time of incarceration for level 2 and level 3 drug felonies by increasing the classification to level 1 drug felonies.
- For those not currently incarcerated for level 2 and 3 drug felonies, the bills reclassification to a level 1 drug felony requires a mandatory DOC sentence.
- Third, by reclassifying a level 1 drug misdemeanor to a level 1 drug felony, costs will shift from Denver County Court, which is funded locally, to Denver District Court, which is funded by the state.

Increased Incarceration

Based on the above sentencing data, estimates from the DOC, and 2023 average length of stay data, the fiscal note makes the following assumptions:

Of the 143 individuals convicted for the existing level 2 drug felony distribution offense:

- 90 individuals currently sentenced to DOC will have sentences lengthened from an average of 32 months to 48 months as a result of the reclassification to a level 1 drug felony; and
- the remaining 53 individuals will be sentenced to the DOC under the bill.

Of the 154 individuals convicted for the existing level 3 drug felony distribution offense:

- 70 individuals currently sentenced to the DOC will have sentences lengthened from an average of 18 months to 48 months as a result of the reclassification to a level 1 drug felony; and
- the remaining 84 individuals will be sentenced to the DOC under the bill.

Of those sentenced for the current level 1 drug misdemeanor for possession, the fiscal note assumes that a minimal amount of individuals will be sentenced to the DOC under the bill's level 4 drug felony for possession. This is based on an analysis of Judicial Department data conducted by Legislative Council Staff that shows about 5 percent of the level 1 drug misdemeanor sentences involve jail. Additionally, Section 18-1.3-104.5, C.R.S., requires courts to exhaust all reasonable and appropriate alternative sentences before sentencing someone to the DOC for a level 4 drug felony.

Cases from the City and County of Denver

In the last two years, the Denver County Court has seen an annual average of 470 cases with a level 1 drug misdemeanor possession of less than 1 gram of a substance with a synthetic opiate charge. Due to the bill's reclassification of the offense, these cases will be prosecuted in Denver District Court, which is funded and administered by the state.

Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Revenue

The bill will increase state revenue by an estimated \$39,000 in FY 2025-26 and \$123,000 in FY 2025-26 and future years. All revenue collected from criminal fines and fees are deposited into various cash funds and the General Fund, and are subject to TABOR. Based on Judicial revenue data, level 4 drug felonies are assessed, on average, about \$2,084 more in criminal fines and fees than level 1 drug misdemeanors. This revenue increase is based on the sentencing assumptions in the outlined above, and factor in assumed indigency and collection rates. Revenue increases in the second year due to collections from assessments from the previous years.

State Expenditures

The bill increases state expenditures by \$1.3 million in FY 2025-26, \$4.7 million in FY 2026-27, and by similar amounts ongoing. These costs will be incurred in the Judicial Department, the Office of the State Public Defender, and the Department of Corrections as shown in Tables 2 to 2C and described in the sections below. Costs are paid from the General Fund.

Table 2
State Expenditures
All Departments

Department	Budget Year FY 2025-26	Out Year FY 2026-27
Judicial Department	\$275,036	\$265,415
Office of the State Public Defender	\$1,018,258	\$1,023,599
Department of Corrections	\$0	\$3,392,839
Total Costs	\$1,293,294	\$4,681,853

Judicial Department

The bill increases expenditures in the Judicial Department to hire additional court staff, and will impact Division of Probation workload.

Court Staff Impact

Based on the assumed number of 470 Denver County Court cases moving to Denver District Court, as outlined in the Assumptions section, the Judicial Department will require 2.0 FTE. One judge can handle about 936 drug felony cases, and each judge requires a 1-to-3 ratio of support staff. This results in a need of 0.5 FTE magistrate, and 1.5 FTE support staff. In addition to standard operating and capital outlay costs, magistrates also receive an additional \$4,420 in operating expenses for robes, law library set up and maintenance, and travel.

Probation

Workload in the Probation Division is impacted in two ways. First, expenditures will decrease as a result of the bill's reclassification of several offenses to level 1 drug felonies, since individuals sentenced to probation under current law will instead be sentenced to the DOC. Second, expenditures will increase due to cases moving from Denver County Court probation to Denver District Court probation. The expected increase and decrease of cases is expected to even out resulting in a minor change in workload.

**Table 2A
State Expenditures
Judicial Department**

Cost Component	Budget Year FY 2025-26	Out Year FY 2026-27
Personal Services	\$207,191	\$215,122
Operating Expenses	\$4,162	\$4,240
Capital Outlay Costs	\$20,810	\$1,200
Centrally Appropriated Costs	\$42,873	\$44,853
Total Costs	\$275,036	\$265,415
Total FTE	1.9 FTE	2.0 FTE

Office of the Public Defender

Starting in FY 2025-26, the bill increases expenditures in the Office of the Public Defender (OSPD) by about \$1.0 million per year to hire additional staff to defend indigent offenders, as described below.

Staff

By increasing the crime classification level and mandating sentences to the DOC, the OSPD requires additional attorneys to handle more complex and longer cases. One public defender can annually handle a caseload of 64 level 1 drug felony cases, 142 level 2 drug felony cases, 199 level 3 drug felony cases, and 310 level 4 drug felony or level 1 drug misdemeanor cases. The bill is assumed to shift 593 caseloads to level 1 drug felony cases, resulting in the need for an additional 5.3 FTE.

The addition of 5.3 public defenders requires 4.4 FTE for support staff, including investigators (at a 1-to-3 attorney ratio), legal assistants (at a 1-to-6 attorney ratio), administrative assistants (at a 1-to-4 attorney ratio), and central staff (at 4.5 percent of trial office staff). The fiscal note assumes all staff will start August 1.

**Table 2B
State Expenditures
Office of the State Public Defender**

Cost Component	Budget Year FY 2025-26	Out Year FY 2026-27
Personal Services	\$747,744	\$804,880
Operating Expenses	\$11,392	\$12,416
Capital Outlay Costs	\$66,700	\$0
Attorney Registration and Training	\$10,950	\$10,950
Centrally Appropriated Costs	\$181,344	\$195,353
Total Costs	\$1,018,258	\$1,023,599
Total FTE	9.0 FTE	9.7 FTE

Department of Corrections

Section 2-2-701, C.R.S., requires Legislative Council Staff to provide information to the General Assembly on long-term costs for prison capital construction, operations, and parole for any bill that potentially increases periods of imprisonment in the DOC. These impacts are described below.

DOC Prison and Parole Costs (Five-year Fiscal Impact)

Based on the assumptions provided in the Comparable Crime Analysis section, this bill increases prison operating costs for the DOC by a total of \$42.7 million over the five-year period beginning in FY 2026-27. The fiscal note assumes no prison operating impacts will occur in the first year due to the amount of time required for criminal filing, trial, disposition and sentencing of each case. Once an offender is released from prison, he or she is assigned to parole. The parole impact is assumed to first occur in FY 2026-27. Table 2C shows the estimated cost of the bill over the next five fiscal years.

**Table 2C
Prison and Parole Operating Costs**

Fiscal Year	Prison ADP Impact	Prison Cost	Parole ADP Impact	Parole Cost	Total Cost
FY 2025-26	-	-	-	-	-
FY 2026-27	137.00	\$3,392,839	0.00	\$0	\$3,392,839
FY 2027-28	307.37	\$7,612,012	-33.37	-\$279,870	\$7,332,143
FY 2028-29	541.22	\$13,403,366	-82.27	-\$690,028	\$12,713,338
FY 2029-30	834.26	\$20,660,575	-168.31	-\$1,411,706	\$19,248,869
Total Five-Year Cost		\$45,068,793		-\$2,381,604	\$42,687,189

¹ ADP impact signifies the bill's affect on average daily populations in DOC.

DOC Capital Construction Costs

In addition to the five-year operating and parole impacts discussed above, Section 2-2-703, C.R.S., requires that the General Assembly consider increased capital construction costs for the DOC to house additional inmates. Based on the average per bed construction costs of previous prison facilities, capital construction costs of \$149 million would be required to increase prison bed space in line with the estimated increase in prison population under this bill. If the General Assembly determines that additional prison bed space is needed, this bill should include a transfer of General Fund to the Capital Construction Fund, to be reappropriated to the Corrections Expansion Reserve Fund. Money in the Corrections Expansion Reserve Fund is available for future DOC construction projects, which would be identified and funded through the annual budget process based on the state's overall prison needs.

Centrally Appropriated Costs

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in the expenditure tables above.

TABOR Refunds

The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the December 2024 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2026-27. Because TABOR refunds are paid from the General Fund, increased cash fund and General Fund revenue will reduce the amount of General Fund available to spend or save.

Local Government

The bill is expected to increase local government workload and costs, as described below. The exact impact to a particular local government will vary depending on the number of offenses committed within its jurisdiction.

District Attorneys

By reclassifying crimes to a higher penalty level, the bill will increase workload and costs for district attorneys to prosecute these cases. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

County Jails

By moving a misdemeanor to a felony, the bill may decrease expenditures to county jails. The exact decrease is unknown. Jails are funded by county governments.

Denver County Court

The bill decreases expenditures to Denver County Courts due to moving cases from Denver County Court (which is funded by the City and County of Denver) to Denver District Court (which is funded by the state).

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, and applies to offenses on or after July 1, 2025.

State Appropriations

For FY 2025-26, the bill requires a General Fund appropriation totaling \$1.1 million including:

- \$232,163 and 1.9 FTE to the Judicial Department; and
- \$836,914 and 9.0 FTE to the Office of the State Public Defender.

State and Local Government Contacts

Corrections

Judicial

District Attorneys

Sheriffs