



Fiscal Note

Legislative Council Staff

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HB 25-1214: APPROPRIATE USE OF PRISON BEDS

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Fiscal note status: This fiscal note reflects the introduced bill, as amended by the House Judiciary Committee. It has also been revised to reflect new information.

Summary Information

Overview. The bill requires a court determination that incarceration is the most appropriate course of action for class 5 and 6 felonies, changes parole considerations for low-risk offenders, and amends statute around drug programming for parolees to reflect current practice.

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

- State Expenditures
- Local Government

Appropriations. For FY 2025-26, the bill requires a net reduction in appropriations of \$729,000, which includes an increase to the Judicial Department and a decrease to the Department of Corrections. See State Appropriations section for detail.

Table 1
State Fiscal Impacts

Type of Impact	Budget Year FY 2025-26	Out Year FY 2026-27	Out Year FY 2027-28	Out Year FY 2028-29
State Revenue	\$8,589	\$24,093	\$50,076	\$59,040
State Expenditures	-\$714,690	-\$2,178,382	-\$3,712,063	-\$4,396,403
Transferred Funds	\$0	\$0	\$0	\$0
Change in TABOR Refunds	\$8,589	\$24,093	not estimated	not estimated
Change in State FTE	0.7 FTE	1.6 FTE	2.4 FTE	2.4 FTE

**Table 1A
 State Revenue**

Fund Source	Budget Year FY 2025-26	Out Year FY 2026-27	Out Year FY 2027-28	Out Year FY 2028-29
General Fund	\$0	\$0	\$0	\$0
Cash Funds	\$8,589	\$24,093	\$50,076	\$59,040
Total Revenue	\$8,589	\$24,093	\$50,076	\$59,040

**Table 1B
 State Expenditures**

Fund Source	Budget Year FY 2025-26	Out Year FY 2026-27	Out Year FY 2027-28	Out Year FY 2028-29
General Fund	-\$728,746	-\$2,210,468	-\$3,760,192	-\$4,444,532
Cash Funds	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0
Centrally Appropriated	\$14,056	\$32,086	\$48,129	\$48,129
Total Expenditures	-\$714,690	-\$2,178,382	-\$3,712,063	-\$4,396,403
Total FTE	0.7 FTE	1.6 FTE	2.4 FTE	2.4 FTE

Summary of Legislation

The bill requires a court determination that incarceration is the most suitable option for class 5 and 6 felonies and level 3 and 4 drug felonies, changes parole considerations for low-risk offenders, and amends statute around drug programming for parolees to reflect current practice, as described below.

Court Determinations for Class 5 and 6 Felonies

For any class 5 or 6 felony or level 3 or 4 drug felony sentenced to the Department of Corrections (DOC), the bill requires the court to find that incarceration is the most suitable option given the facts and circumstances of the case.

Court Notification of Parole Eligibility Date

Unless the offender is sentenced to the DOC as part of a plea deal, the bill requires the DOC to notify the court when an offender who was found guilty of a class 5 or 6 felony or level 3 or 4 drug felony is admitted to the DOC and is either past or within 90 days of their parole eligibility date in the sentenced case. When a court receives the notification, the court must notify the defense and the prosecution and request the defendant file a motion for reconsideration. The court must schedule the hearing, if requested, within 35 days of filing, and may impose an alternative sentence. This hearing is subject to provisions of the Victim Rights Act.

Presumption of Parole for Low-Risk Offenders

The bill creates a presumption, subject to the discretion of the Parole Board, to grant parole to an offender who has reached their parole eligibility date and:

- has been assessed to be low or very low risk on the validated risk assessment scale;
- has not incurred a class I code of penal discipline violation within the previous 12 months or since incarceration, whichever is shorter;
- has not declined to participate in recommended and available programs within the last 12 months;
- was not convicted of a level 1 drug felony, or a class 1, 2, or 3 felony and is not serving an indeterminate sentence; and
- has not been regressed from community corrections or revoked from parole in the last 180 days.

Offenders in the residential phase of a community corrections program are excepted from this presumption of parole. These hearings are subject to provisions of the Victim Rights Act.

The Parole Board cannot deny parole solely because the offender does not have a recommended parole plan, or for not completing treatment or a program that can be ordered as a condition of parole. If an offender who otherwise meets this criteria has a detainer or warrant, the Parole Board must delay the hearing decision or order a conditional release and notify the DOC, which will notify the public defender liaison to determine if the detainer or warrant may be resolved.

The DOC must ensure that every offender has been assessed on the validated risk assessment scale and that Parole Board members have the results. The Parole Board must submit any denials for low-risk offenders in writing to the DOC and the offender. It must also report monthly on the number of hearings conducted of individuals that meet the above criteria, the number of decisions, and the general reason for any deferral or delay of parole.

Participation in Drug Programs

The bill allows the Parole Board to make a referral for placement in a certified recovery residence. The bill also removes the requirement that a parolee pay for an appropriate drug or alcohol program when a chemical test reflects the presence of drugs or alcohol.

Background

The DOC currently considers placement in certified recovery residences for parolees and does not charge parolees for drug and alcohol programs.

Assumptions

Court Determinations for Class 5 & 6 Felonies and Level 3 & 4 Drug Felonies

In 2013, the General Assembly passed Senate Bill 13-250 which required a similar exhaustion of remedies for DOC sentences of level 4 drug felonies. As required by that bill, the Division of Criminal Justice released an [Analysis of SB 13-250](#) on sentencing changes resulting from the bill. According to the report, DOC sentences for level 4 drug felonies fell by 4 percent three years after the passage of the bill compared with the three years before the bill passed. In addition, DOC sentences for probation revocations fell by 5 percent during the same period.

The fiscal note assumes a similar trend will occur with class 5 and 6 felonies and level 3 and 4 drug felonies under the bill. It assumes that there will be 5,090 new court commitments per year to the DOC in future years. Based on the DOC's annual report, 28.6 percent of those will be for a class 5 felony, 13.3 percent will be for a class 6 felony, and 2.5 percent for a level 3 drug felony. The fiscal note does not take into account level 4 drug felonies as they are already subject to an exhaustion of remedies. This results in 1,456 new court commitments for class 5 felonies, 677 new court commitments for class 6 felonies, and 127 new court commitments for level 3 drug felonies. The fiscal note assumes that up to 4 percent of these individuals will be sentenced to probation instead of the DOC. Specifically, 1.3 percent in FY 2025-26, 2.7 percent in FY 2026-27, and 4 percent in FY 2027-28 will not be sentenced to the DOC. This results in:

- 17 fewer class 5 felonies, 8 fewer class 6 felonies, and 2 fewer level 3 drug felonies in FY 2025-26;
- 35 fewer class 5 felonies, 16 fewer class 6 felonies, and 3 fewer level 3 drug felonies in FY 2026-27; and
- 52 fewer class 5 felonies, 24 fewer class 6 felonies, and 5 fewer level 3 drug felonies in FY 2027-28 and ongoing.

In addition to new sentences, the bill is also expected to decrease the number of probation revocations to the DOC. The fiscal notes assumes 7 percent of the 8,510 revocation cases per year result in a DOC sentence (per the [2023 Probation Recidivism Study](#)). As a result, it is assumed there will be:

- 6 fewer class 5 felonies, 3 fewer class 6 felonies, and 1 fewer level 3 drug felonies sentenced in FY 2025-26;
- 13 fewer class 5 felonies, 6 fewer class 6 felonies, and 1 fewer level 3 drug felony sentenced in FY 2026-27; and
- 19 fewer class 5 felonies, 9 fewer class 6 felonies, and 2 fewer level 3 drug felony sentenced in FY 2027-28 and ongoing.

The average length of stay is 16 months for a class 5 felony, 8.5 months for a class 6 felony, and 18.6 months for a level 3 drug felony. The average parole length of stay is 18 months for a class 5 felony, 9.8 months for a class 6 felony, and 9.3 months for a level 3 drug felony.

Resentencing Hearings

The fiscal note assumes that there are about 449 individuals who are sentenced to the DOC within their parole eligibility date and would then have their case reheard. Assuming 65 percent will participate in a resentencing hearing and that there will be a 4 percent decrease, this results in:

- 3 fewer class 5 felonies, 1 fewer class 6 felony, and 0 fewer level 3 drug felonies sentenced in FY 2025-26;
- 5 fewer class 5 felonies, 2 fewer class 6 felonies, and 0 fewer level 3 drug felonies sentenced in FY 2026-27; and
- 8 fewer class 5 felonies, 3 fewer class 6 felonies, and 1 fewer level 3 drug felony sentenced in FY 2027-28 and ongoing.

Overall Bed Decrease

Based on the above assumption, the fiscal note assumes that there will be:

- after prorating for the September 1 start date, 22 fewer class 5 felonies, 10 fewer class 6 felonies, and 2 fewer level 3 drug felonies in FY 2025-26;
- 53 fewer class 5 felonies, 24 fewer class 6 felonies, and 4 fewer level 3 drug felonies in FY 2026-27; and
- 79 fewer class 5 felonies, 36 fewer class 6 felonies, and 8 fewer level 3 drug felonies in FY 2027-28 and ongoing.

Decision of Parole

The bill may also decrease the amount of time in the DOC from creating a presumption that a parolee be approved for parole if they meet certain conditions. This impact depends on future Parole Board decisions and has not been estimated.

State Revenue

By sentencing additional individuals to probation, the bill increases Offender Services Cash Fund revenue by an estimated \$8,589 in FY 2025-26, \$24,093 in FY 2026-27, \$50,076 in FY 2027-28, and \$59,040 in FY 2028-29. This is based on the assumed number of individuals sentenced to probation, and on current indigence and collection rates of the Judicial Department.

State Expenditures

On net, the bill reduces state General Fund expenditures by \$714,690 in FY 2025-26, \$2.2 million in FY 2026-27, \$3.7 million in FY 2027-28, and \$4.4 million in FY 2028-29. These expenditure reductions occur in the Judicial Department and the Department of Corrections, as shown in Table 2 and described below.

**Table 2
 State Expenditures**

Department	Budget Year FY 2025-26	Out Year FY 2026-27	Out Year FY 2027-28	Out Year FY 2028-29
Judicial Department	\$80,942	\$175,751	\$260,729	\$252,929
Department of Corrections	-\$795,632	-\$2,354,133	-\$3,972,792	-\$4,649,332
Total Costs	-\$714,690	-\$2,178,382	-\$3,712,063	-\$4,396,403

Judicial Department

The bill increases state expenditures in the Judicial Department due to additional sentences to the Division of Probation. The bill also increases workload for the courts to conduct additional hearings and make additional findings. Staff are prorated for an assumed October 1, 2025, hire date in FY 2025-26.

Division of Probation

Based on the assumed number of cases sentenced to probation rather than the DOC in the bill, the Division of Probation requires 0.8 FTE in FY 2025-26, 1.6 FTE in FY 2026-27, and 2.4 FTE in FY 2027-28 and ongoing to manage increased presentencing report workload and the increase in the number of individuals sentenced to probation instead of the DOC. This includes 0.6 FTE in FY 2025-26, 1.2 FTE in FY 2026-27, and 1.8 FTE in FY 2027-28 and beyond for probation officers. Each probation officer requires a probation supervisor, at a 1:6 ratio, and a staff assistant at a 1:5 ratio resulting in the total FTE outlined in Table 2A.

Trial Courts

Workload in the trial courts will increase to conduct additional resentencing hearings. This assumes there will be 292 resentencing hearings, each requiring one hour, due to a DOC sentence within 90 days of the individual’s parole eligibility date. This results in the need for 0.2 FTE magistrate, which is within the absorbable threshold for the courts.

**Table 2A
 State Expenditures
 Judicial Department**

Cost Component	Budget Year FY 2025-26	Out Year FY 2026-27	Out Year FY 2027-28	Out Year FY 2028-29
Personal Services	\$57,632	\$131,290	\$196,935	\$196,935
Operating Expenses	\$2,254	\$4,975	\$7,865	\$7,865
Capital Outlay Costs	\$7,000	\$7,400	\$7,800	\$0
Centrally Appropriated Costs	\$14,056	\$32,086	\$48,129	\$48,129
Total Costs	\$80,942	\$175,751	\$260,729	\$252,929
Total FTE	0.7 FTE	1.6 FTE	2.4 FTE	2.4 FTE

Department of Corrections

The bill decreases expenditures in the DOC due to the assumption of fewer sentences.

Prison and Parole Decrease

As outlined in the Assumptions section, this bill decreases prison and parole operating costs for the DOC by a total of \$16.6 million over the five-year period beginning in FY 2025-26. Table 2B shows the estimated cost savings of the bill over the next five fiscal years. Savings in the first year are prorated for the bill’s September 1, 2025, effective date.

**Table 2B
 State Expenditures
 Prison and Parole Operating Costs**

Fiscal Year	Prison ADP Impact¹	Prison Cost	Parole ADP Impact¹	Parole Cost	Total Cost
FY 2025-26	-31.13	-\$770,818	-2.96	-\$24,814	-\$795,632
FY 2026-27	-84.25	-\$2,086,487	-31.91	-\$267,647	-\$2,354,133
FY 2027-28	-132.35	-\$3,277,743	-82.87	-\$695,050	-\$3,972,792
FY 2028-29	-143.29	-\$3,548,551	-131.24	-\$1,100,781	-\$4,649,332
FY 2029-30	-143.29	-\$3,548,551	-154.35	-\$1,294,621	-\$4,843,171
Total Five-Year Cost		-\$13,232,149		-\$3,382,911	-\$16,615,061

¹ ADP impact signifies the bill’s effect on average daily populations in DOC.

Parole Board

Parole Board workload will increase to hear additional parole applications and to provide the reporting required by the bill. In addition, if more individuals are granted parole, workload in the Division of Adult Parole will increase. Because it is unknown how Parole Board decisions will change, the fiscal note assumes any adjustments in appropriations will be handled through the annual budget process.

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 March 2025 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 revenue will reduce the amount of General Fund available to spend or save.

Local Government

Workload in district attorney offices will increase to prepare for and attend more hearings. District attorney offices are funded at the county level.

Effective Date

The bill takes effect September 1, 2025, assuming no referendum petition is filed, and applies to sentences entered and parole board hearings held on or after this date.

State Appropriations

For FY 2025-26, the bill requires the following changes in General Fund appropriations:

- an increase of \$66,886 to the Judicial Department, and 0.7 FTE; and
- a decrease of \$795,632 to the Department of Corrections.

State and Local Government Contacts

Corrections

Judicial