



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

SB 19-014

**REVISED
FISCAL NOTE**

(replaces fiscal note dated January 17, 2019)

Drafting Number: LLS 19-0047
Prime Sponsors: Sen. Coram
Rep. Carver

Date: February 15, 2019
Bill Status: House Judiciary
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Bill Topic: ORGANIZED RETAIL THEFT PREVENTION

**Summary of
Fiscal Impact:**

- | | |
|--|---|
| <input checked="" type="checkbox"/> State Revenue (<i>minimal</i>) | <input checked="" type="checkbox"/> TABOR Refund (<i>minimal</i>) |
| <input checked="" type="checkbox"/> State Expenditure | <input checked="" type="checkbox"/> Local Government |
| <input type="checkbox"/> State Transfer | <input type="checkbox"/> Statutory Public Entity |

This bill creates the crime of organized retail theft and modifies the crime of failure to record sales by a secondhand dealer. Beginning in FY 2019-20, this bill increases state and local government revenue, costs, and workload by a minimal amount.

**Appropriation
Summary:** No appropriation is needed.

**Fiscal Note
Status:** This fiscal note has been revised to reflect the reengrossed bill.

Summary of Legislation

This bill creates the crime of organized retail theft. A person commits organized retail theft if he or she:

- acts with one or more persons with the intent to steal merchandise for the purpose of reselling or exchanging the stolen merchandise;
- acts with one or more persons to receive, purchase, or possess stolen merchandise; or
- participates in or arranges an organized effort to steal or facilitate the theft of merchandise from one or more merchants;

Organized retail theft is a class 1 misdemeanor. However, organized retail theft for a person that has previously been convicted of theft that has three or more separate organized retail theft violations in a six-month period will be charged with a class 6 felony up to a class 2 felony based on the aggregate value of the merchandise stolen. An offender convicted of organized retail theft may be ordered by the court to stay away from retail establishments as a condition of his or her probation.

Also under the bill, secondhand dealers or any person that sells new goods at a flea market or similar facility must record the purchase of store credit, gift cards, or merchandise cards for resale in a register that is accessible to law enforcement. Failure to record such purchases is a class 3 misdemeanor and a class 2 misdemeanor for any subsequent offense.

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 changes an element of an existing crime. The following sections outline data on crimes that are comparable to the offense in this bill and discuss assumptions on future rates of criminal convictions under the bill.

Prior conviction data. This bill creates the new offense of organized retail theft. This bill also changes the element of the existing crime of failure to record sales by a secondhand dealer and expands upon the definition of a "valuable article" to include store credit, gift cards, or merchandise cards. To form an estimate on the prevalence of these crimes, the fiscal note analyzed the existing offenses of possession of burglary tools, criminal conspiracy, and failure to record sales by a secondhand dealer as comparable crimes.

- *Possession of burglary tools.* There have been 291 offenders convicted and sentenced for possession of burglary tools during the last three years. Of these offenders, 248 were male, 42 were female, and 1 did not have a gender identified. Demographically, 245 were White, 21 were African American, 20 were Hispanic, 2 were Asian, 2 were classified as "Other", and 1 did not have a race identified. Of the 291 offenders sentenced, 148 were sentenced to of incarceration in the Department of Corrections (DOC) with the remaining receiving some form alternative sentence.
- *Criminal Conspiracy.* There have been 6 offenders convicted and sentenced for conspiracy to commit a felony during the last three years. Of these offenders, all 6 were male. Demographically, 4 were White, 1 was Hispanic, and 1 did not have a race identified. Of the 6 offenders sentenced, 3 were sentenced to of incarceration in the DOC with the remaining receiving some form of alternative sentence.
- *Failure to record sales by a secondhand dealer.* There have been zero offenders convicted and sentenced for failure to record sales by a secondhand dealer during the last three years

Assumptions. This analysis is based on the following assumptions.

Organized retail theft. It is assumed that an offender would be charged with organized retail theft in addition to felony possession of burglary tools or theft which can be a misdemeanor or felony depending on the value of the merchandise sold and may serve a longer sentence in county jail or the DOC or serve a sentence based on the most serious charge. Overall, any county jail or DOC impacts are expected to be minimal.

Secondhand dealer records. Due to the lack of convictions for the failure to record sales by a secondhand dealer, this analysis assumes a high level of compliance and that any impacts will be minimal.

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

State Revenue

By creating the new crime of organized retail theft and modifying the existing misdemeanor offense of failure to record sales by a second hand dealer, this bill increases state revenue from criminal fines and court fees by a minimal amount beginning in FY 2019-20, credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. The fine penalty for a class 1 misdemeanor organized retail theft is \$500 to \$5,000 and the fine penalty for felony organized retail theft ranges from \$1,000 to \$1,000,000. The fine penalty for a class 3 misdemeanor is \$50 to \$750 with a subsequent offense being a class 2 misdemeanor with a fine range of \$250 to \$1,000 (secondhand dealer records). Additionally, court fees may be imposed on a case-by-case basis for a variety of court-related costs, such as probation supervision, drug surcharges, or late fees. Because the courts have the discretion of incarceration, imposing a fine, or both, a precise state revenue impact cannot be determined. Criminal fine and court fee revenue is subject to TABOR.

State Expenditures

Beginning in FY 2019-20, this bill may increase costs and workload in the Judicial Department and the Department of Corrections as described below.

Judicial Department. This bill will increase costs and workload for the trial courts in the Judicial Department. To the extent that offenders are sentenced to probation, costs and workload in the Division of Probation will increase. Costs and workload may also increase in the agencies that provide representation to indigent persons, including the Office of the State Public Defender and the Office of Alternate Defense Council. Overall, it is assumed that this workload can be accomplished within existing appropriations. Should a change in funding be required for any agency or division with the Judicial Department, the fiscal note assumes it will be addressed through the annual budget process.

Department of Corrections. To the extent that this bill increases the number of persons sentenced to prison for felony organized retail theft, costs will increase. However, at this time it is assumed that the likelihood of persons being sentenced to the custody of the DOC is minimal and that any increase in costs will be addressed through the annual budget process, if necessary.

Department of Human Services. To the extent that this bill increases the number of juveniles adjudicated of organized retail theft and sentenced to the Division of Youth Services, costs will increase. This impact is assumed to be minimal and that any increase in costs will be addressed through the annual budget process, if necessary.

TABOR refunds. The bill is expected to decrease state General Fund obligations for TABOR refunds by a minimal amount in FY 2019-20. Under current law and the Legislative Council Staff December 2018 forecast, the bill will correspondingly reduce the amount refunded to taxpayers via sales tax refunds on income tax returns for tax year 2020. The state is not expected to collect a TABOR surplus in FY 2020-21.

Local Government

Beginning in FY 2019-20, this bill is expected to increase local government revenue, costs, and workload by a minimal amount 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. This bill will minimally increase costs and workload for district attorneys to prosecute new offenses for organized retail theft and failure to disclose sales by a secondhand dealer. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

County jails. To the extent offenders are sentenced to county jail or are sentenced to a longer term, this bill will increase county jail costs. However, because the courts have the discretion of incarceration or imposing a fine, the precise county impact cannot be determined. Under current law, the state reimburses county jails for housing state inmates. Based on a 2018 Joint Budget Committee Staff county jail survey, the average cost to house an offender in a county jail is \$98.83 per day, but varies significantly from \$43.65 to \$350.21 per day depending on the county. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.93.

Denver County Court. The bill potentially increases revenue, costs and workload for the Denver County Court, which is managed and funded by the City and County of Denver, to try misdemeanor cases under the bill. Probation services in the Denver County Courts may also experience an increase in revenue, costs, and workload revenue to supervise persons convicted under the bill within Denver County. These impacts are assumed to be minimal.

Effective Date

The bill takes effect August 2, 2019, if the General Assembly adjourns on May 3, 2019, as scheduled, and no referendum petition is filed. It applies to acts committed on or after the effective date.

State and Local Government Contacts

Corrections	Counties	District Attorneys
Information Technology	Judicial	Municipalities
Regulatory Agencies		