# Fiscal Note

## Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

# HB 25-1141: GIFT CARD & RETAIL PROPERTY CRIME PENALTIES

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Sen. Carson

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**Fiscal note status:** This fiscal note reflects the introduced bill.

## Summary Information

**Overview.** The bill mandates a prison sentence for burglary, robbery, or theft from a store when the offender has prior convictions and adds gift cards to the offenses of theft and forgery.

**Types of impacts.** The bill is 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 requires a reduction in appropriations of $91,120 from the Judicial Department.

**Table 1**
**State Fiscal Impacts**

| Type of Impact[1] | Budget Year FY 2025-26 | Out Year FY 2026-27 |
|---|---|---|
| State Revenue | -$108,108 | -$164,268 |
| State Expenditures | -$115,410 | $1,629,303 |
| Transferred Funds | $0 | $0 |
| Change in TABOR Refunds | -$108,108 | -$164,268 |
| Change in State FTE | -1.3 FTE | -1.4 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 Fund | $0 | $0 |
| Cash Funds | -$108,108 | -$164,268 |
| **Total Revenue** | **-$108,108** | **-$164,268** |

**Table 1B**
**State Expenditures**

| Fund Source | Budget Year FY 2025-26 | Out Year FY 2026-27 |
|---|---|---|
| General Fund | -$91,120 | $1,655,444 |
| Cash Funds | $0 | $0 |
| Federal Funds | $0 | $0 |
| Centrally Appropriated | -$24,290 | -$26,141 |
| **Total Expenditures** | **-$115,410** | **$1,629,303** |
| **Total FTE** | **-1.3 FTE** | **-1.4 FTE** |

## Summary of Legislation

The bill mandates a sentence to the Department of Corrections (DOC) for burglary, robbery, or theft from a store if the offender has prior convictions, and adds gift cards to the offenses of theft and forgery, as described below.

### Mandatory Sentencing

The bill requires a sentence to the DOC if a person is convicted of burglary, robbery, or theft from a store and has prior convictions in the last four years for any two offenses of burglary, robbery, or theft from a store. A sentence imposed pursuant to this provision must be for at least the midpoint of the presumptive range.

### Offenses Related to Gift Cards

The bill adds gift cards to the crimes of theft and forgery. In determining the crime classification for theft of a gift card based on value, the bill defines the value as the full monetary face value, or the maximum potential value if it is a variable load gift card.

## 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.

### Prior Conviction Data

#### Theft and Forgery of Gift Cards

The bill creates a new factual basis for the existing offense of theft by adding gift cards to the crime of theft. From FY 2021-22 to FY 2023-24, 3,685 individuals have been convicted and sentenced for theft with a value of less than $300, a petty offense. The fiscal note assumes the majority of gift cards have a value of less than $300. Of the persons convicted, 2,372 were male, 1,296 were female, and 17 did not have a gender identified. Demographically, 3,064 were White, 270 were Black/African American, 225 were Hispanic, 12 were Asian, 19 were American Indian, 89 were classified as "Other," and 6 did not have a race identified.

The bill also creates a new factual basis for the existing offense of forgery by adding gift cards. From FY 2021-22 to FY 2023-24, zero offenders have been convicted and sentenced for the offense of forgery of symbols of value usable in place of money.

This analysis assumes that there will be a minimal increase in criminal filings due to adding gift cards to the list of theft and forgery. For theft, the fiscal note assumes district attorneys may already prosecute these offenses as theft. For forgery, based on prior conviction data, the fiscal note assumes instances of forging a gift card are minimal.

#### Mandatory Sentencing for Theft, Robbery, and Burglary of a Store

The bill requires a mandatory sentence at the midpoint of the presumptive range for any offender convicted of theft, robbery, or burglary from a store who also has two prior convictions of theft, robbery, or burglary from a store. Felony classifications for these offenses range from a class 6 felony (the least serious) to a class 2 felony (the most serious). For reference, Table 2 below shows the minimum, midpoint, and maximum sentences by felony classification

**Table 2**
**Sentencing by Felony Classification**

| Felony Classification | Minimum Sentence | Midpoint Sentence | Maximum Sentence |
|---|---|---|---|
| Class 2 | 8 years | 16 years | 24 years |
| Class 3 | 4 years | 8 years | 12 Years |
| Class 4 | 2 years | 4 years | 6 years |
| Class 5 | 1 year | 1.5 years | 3 years |
| Class 6 | 1 year | 1.25 years | 1.5 years |

Because the minimum sentence for a class 2 felony falls outside the five-year period, the fiscal note only looks at changes for class 3 through 6 felonies. Currently, there are about 3,166 individuals sentenced to the DOC for theft, robbery, or burglary. Of those, about 757 received a sentence of less than the midpoint. Based on the amount of individuals currently on probation who have prior convictions, the fiscal note estimates that 26 percent of individuals sentenced have a prior conviction for theft, robbery, or burglary. In addition, the fiscal note assumes that 19 percent of those occurred in a store based on Colorado Crime Stats data from 2022 and 2023. Applying these factors would result in longer sentences for about 35 individuals.

The DOC's FY 2022 Statistical Report indicates that, on average, class 6 felony offenders spend 51 percent of their sentence in prison; for class 5 felonies, 49 percent; for class 4 felonies, 45 percent; and class 3 felonies, 50 percent. Assuming these 35 individuals currently receive the minimum sentence and under the bill would instead receive the midpoint, and further considering the current count of specific felony classifications sentenced to the DOC, as well as the average amount of time spent in prison, this results in:

- 10 individuals staying an additional 1.5 months for a class 6 felony;
- 5 individuals staying an additional 5.9 months for a class 5 felony;
- 12 individuals staying an additional 10.7 months for a class 4 felony; and
- 8 individuals staying an additional 23.9 months for a class 3 felony.

In addition to longer prison sentences, the bill also mandates sentences to the DOC. Currently, there are 1,420 individuals sentenced to probation for theft, robbery, and burglary. Using the above assumptions of prior convictions and the percentage of offenses occurring in a store, it is estimated that 70 individuals per year will receive a sentence to the DOC instead of to probation. Using sentencing data and assuming similar rates for the average sentences served outlined above, it is assumed that:

- 10 individuals would have a class 6 felony, with a 7.7 month stay;
- 19 individuals would have a class 5 felony, with an 11.8 month stay;
- 26 individuals would have a class 4 felony, with a 21.4 month stay; and
- 15 individuals would have a class 3 felony, with a 47.8 month stay.

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

## State Revenue

The bill reduces revenue to the Offender Surcharge Cash Fund by $108,108 in FY 2025-26 and $164,268 in FY 2026-27, due to individuals being sentenced to the DOC in lieu of probation. Currently, offenders sentenced to probation pay a $50 supervision surcharge, which is assessed as one lump sum upon sentencing. The amounts listed above take into account current indigency rates and collection rates of the department.

## State Expenditures

On net, the bill decreases state expenditures by about $115,000 in FY 2025-26, and increases state expenditures by about $1.6 million in FY 2026-27, with greater increases in future years. These costs will be incurred in the Judicial Department and the Department of Corrections as shown in Table 3 and described in the sections below. Costs are paid from the General Fund.

**Table 3**
**State Expenditures**
**All Departments**

| Department | Budget Year FY 2025-26 | Out Year FY 2026-27 |
|---|---:|---:|
| Judicial Department | -$115,410 | -$124,618 |
| Department of Corrections | $0 | $1,753,921 |
| **Total Costs** | **-$115,410** | **$1,629,303** |

### Judicial Department

The bill decreases expenditures in the Judicial Department by about $115,000 in FY 2025-26 and about $125,000 in FY 2026-27 within the Division of Probation. The bill also increases workload in the trial courts, and agencies that represent indigent clients as described below.

#### Probation Division

Based on the assumed number of individuals sentenced to probation under current law and who will be sentenced to the DOC under the bill, as well as current case standards and staffing ratios for probation officers, the division requires a reduction of 1.3 FTE. This includes 1.0 FTE probation officers, 0.2 FTE supervisor, and 0.2 FTE support staff. Cost reductions are prorated for an August 1, 2025, start date. These cost reductions are detailed in Table 3A.

**Table 3A**
**State Expenditures**
**Judicial Department**

| Cost Component | Budget Year FY 2024-25 | Out Year FY 2025-26 |
|---|---|---|
| Personal Services | -$87,545 | -$94,085 |
| Operating Expenses | -$3,575 | -$4,392 |
| Capital Outlay Costs | $0 | $0 |
| Centrally Appropriated Costs | -$24,290 | -$26,141 |
| **Total Costs** | **-$115,410** | **-$124,618** |
| **Total FTE** | **-1.3 FTE** | **-1.4 FTE** |

### Trial Courts and Independent Agencies that Represent Indigent Clients

To the extent the bill increases the amount of time to litigate cases, due to the fact offenders must be sentenced to the DOC and will be less likely to accept a plea agreement, workload in the trial courts and offices that represent indigent clients (public defenders and the Office of Alternate Defense Counsel) will increase. The fiscal note assumes that these cases already involve intensive litigation and any increase will be minimal.

## 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 Department of Corrections. 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 about $13.3 million over the five-year period beginning in FY 2025-26. The fiscal note assumes no prison or parole 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. Table 3B shows the estimated cost of the bill over the next five fiscal years.

**Table 3B**
**State Expenditures**
**Prison and Parole Operating Costs**

| Fiscal Year | Prison ADP Impact[1] | Prison Cost | Parole ADP Impact[1] | Parole Cost | Total Cost |
|---|---|---|---|---|---|
| FY 2025-26 | 0.00 | $0 | 0.00 | $0 | $0 |
| FY 2026-27 | 71.24 | $1,764,344 | -1.24 | -$10,424 | $1,753,921 |
| FY 2027-28 | 116.03 | $2,873,486 | 19.88 | $166,748 | $3,040,234 |
| FY 2028-29 | 139.03 | $3,443,087 | 50.33 | $422,122 | $3,865,209 |
| FY 2029-30 | 161.70 | $4,004,599 | 74.31 | $623,323 | $4,627,922 |
| **Total Five-Year Cost** | | **$12,085,517** | | **$1,201,770** | **$13,287,286** |

1 ADP impact signifies the bill’s effect 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 $28.9 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 decrease 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, decreased cash fund revenue will increase the amount of General Fund available to spend or save.

## Local Government

Similar to the state, costs to district attorneys will increase due to longer litigation resulting from mandatory DOC sentences, and to establish prior convictions. Currently, more experienced deputy district attorneys handle felony cases. If additional district attorneys are required, this will increase costs in district attorney offices by an estimated $90,000. Exact impacts and the exact FTE need will vary by district. District attorney offices are funded at the county level.

## Technical Note

### Offender Surcharge Cash Fund Insolvency

The fee that probationers are charged is set in statute at $50. Decreasing the amount of money in the Offender Surcharge Cash Fund may require the General Assembly to increase the fee in statue in future years to avoid solvency issues. Currently, the fund is projected to become insolvent in FY 2027-28.

## Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed, and applies to offenses on or after this date.

## State Appropriations

For FY 2025-26, the bill requires a General Fund appropriation reduction of $91,120 to the Judicial Department and 1.3 FTE.

## State and Local Government Contacts

Corrections

Judicial

District Attorneys