



## Legislative Council Staff

*Nonpartisan Services for Colorado's Legislature*

# Bill 1

## FISCAL NOTE

**Drafting Number:** LLS 20-0361  
**Prime Sponsors:**

**Date:** October 29, 2019  
**Bill Status:** Bill Request  
**Fiscal Analyst:** Bill Zepernick | 303-866-4777  
Bill.Zepernick@state.co.us

### Bill Topic: YOUNG ADULT CRIMINAL JUSTICE REFORMS

#### Summary of Fiscal Impact:

- ☒ State Revenue
- ☒ State Expenditure
- ☐ State Transfer
- ☒ TABOR Refund
- ☒ Local Government
- ☐ Statutory Public Entity

This bill makes several changes to how young adults (age 18 to 25) are processed within the criminal justice system. Overall, this bill increases state expenditures and decreases state revenue on an ongoing basis beginning in FY 2020-21. It also increases local government costs.

#### Appropriation Summary:

For FY 2020-21, this bill requires a General Fund appropriation of \$41.2 million to multiple state agencies.

#### Fiscal Note Status:

This fiscal note reflects the bill draft requested by the Prison Population Management Interim Study Committee. This fiscal note is a preliminary assessment; additional time is required to fully evaluate the potential transition of young adult offenders from the Department of Corrections to Division of Youth Services facilities. This fiscal note will be updated to reflect additional information and analysis if Bill 1 is approved and introduced at the 2020 legislative session.

**Table 1**  
**State Fiscal Impacts Under Bill 1**

		FY 2020-21	FY 2021-22	FY 2023-24	FY 2024-25
<b>Revenue</b>	Cash Funds	(\$0.2 million)	(\$0.3 million)	(\$0.3 million)	(\$0.3 million)
<b>Expenditures</b>	General Fund	\$41.2 million	\$65.7 million	\$117.7 million	\$102.7 million
<b>Transfers</b>		-	-	-	-
<b>TABOR Refund</b>	General Fund	(\$0.2 million)	(\$0.3 million)	(\$0.3 million)	(\$0.3 million)

\* FY 2022-23 excluded due to space limitations.

## Summary of Legislation

This bill makes several changes to state law concerning individuals convicted of a felony committed when they were between the ages of 18 and 25 (young adults). These changes are outlined below.

**Transfers to juvenile court.** The bill creates a new court proceeding at which the district court may consider transferring the case of a young adult convicted of a class 3, 4, 5, or 6 felony to juvenile court if the court determines that the transfer is in the best interest of the public or the defendant. Any such transfer waives the district court's jurisdiction over the case and authorizes the juvenile court to consider the case and impose any sentence on the young adult that a juvenile court is permitted to impose. Factors that must be considered by the district court prior to waiving its jurisdiction are outlined in the bill.

**Juveniles convicted as adults program.** Under current law, the Department of Corrections (DOC) operates a specialized program for inmates sentenced to an adult prison for an offense committed prior to the age of 18. This bill extends program eligibility to offenders convicted of an offense that occurred when they were young adults.

**Deferred judgment, convictions, and probation violations.** This bill allows a young adult with a deferred judgment who violates the conditions of the deferred judgment to continue such judgment if the court determines the defendant would be better served under the existing deferred judgment sentence and public safety would not be compromised. This bill also allows a class 4, 5, or 6 non-violent felony conviction for a young adult to be vacated and entered as a misdemeanor upon successful completion of a community-based sentence to probation or community corrections. Finally, the bill prohibits a probation revocation hearing for technical probation violations committed by young adults.

**Young adult sentencing.** This bill creates the following young adult felony sentencing grid for convictions on or after October 1, 2020, shown in Table 2. Under the bill, non-violent young adult offenders with no prior convictions must be sentenced to probation. The court cannot sentence a young adult offender to more than 12 years for any single class 3, 4, 5, or 6 felony.

**Table 2**  
**Young Adult Sentencing Under Current Law and Bill 1**

Current Law					Bill 1			
Felony Class	Min. Sentence	Max. Sentence	Parole	Fine Range	Min. Sentence	Max. Sentence	Parole	Fine Range
1	Life	Death	-	-	Life	Death	-	-
2	8 years	24 years	5 years	\$5,000 to \$1 million	4 years	12 years	4 years	\$2,500 to \$500,000
3	4 years	12 years	5 years	\$3,000 to \$750,000	2 years	6 years	3 years	\$1,500 to \$375,000

**Table 2 (cont.)  
Young Adult Sentencing Under Current Law and Bill 1**

Current Law					Bill 1			
Felony Class	Min. Sentence	Max. Sentence	Parole	Fine Range	Min. Sentence	Max. Sentence	Parole	Fine Range
4	2 years	6 years	3 years	\$2,000 to \$500,000	1 year	2 years	2 years	\$1,000 to \$250,000
5	1 year	3 years	2 years	\$1,000 to \$100,000	6 months	1 year	1 year	\$500 to \$50,000
6	1 year	18 months	1 year	\$1,000 to \$100,000	6 months	9 months	1 year	\$500 to \$50,000

## Assumptions

There are roughly 55,000 felony case filings per year with 10,090 cases involving young adult offenders, based on an analysis of case filing data. After factoring out current drug felonies that will become misdemeanors as of March 2020, it is assumed that 8,500 cases will seek a transfer to the juvenile court system. Starting with 8,500 potential transfers, the following assumptions are made:

- 4,675 cases will transfer to the juvenile court system (just over half, or 55 percent);
- 3,120 of the 4,675 cases will receive a sentence, based on a 67 percent conviction rate;
  - 1,400 of the 3,120 (45 percent) of these cases will involve a first-time offender and result in a probation sentence;
  - 470 of the 3,120 (15 percent) will involve a repeat offender that will receive an alternative sentence such as a deferred sentence;
  - 940 of the 3,120 (30 percent) will be sentenced to the Division of Youth Services (DYS) in the Department of Human Services (DHS), rather than to the DOC;
  - 310 of the 3,120 (10 percent) will be violent or habitual offenders and will be sentenced to the Department of Corrections.

Trial court impacts will occur beginning in FY 2020-21; however, sentencing impacts will not occur until FY 2021-22 due to amount of time required for criminal filing, trial, disposition and sentencing of each case which is generally 12 months. Additionally, because DHS facilities are not configured to house young adult inmates who must be kept separate from juveniles, DHS bed impacts are phased in over a five-year period beginning FY 2021-22 to allow time for facility upgrades, renovation, expansion, new construction, or appropriate contract placements. Based on 940 new DHS commitments per year and an average commitment of approximately 10 months, average daily bed count in DHS facilities could increase by approximately 750 when the bill is fully implemented. It is assumed that 150 to 200 new DHS beds will come online every year over a four- to five-year period. Until sufficient DHS facilities are available to house the influx of young adults, it is assumed that these offenders will be housed in the DOC.

## State Revenue

By reducing the fine penalties for young adult offenders, this bill reduces the amount of cash fund revenue that will be collected by the Judicial Department beginning in FY 2020-21. For FY 2020-21, the fine and fee reduction is estimated to be \$208,474 and is prorated based on the October 1 effective date of the young adult sentencing grid. For FY 2021-22 and thereafter, the reduction is estimated to be \$277,965, based on a full year of reduced fine and fee revenue. These estimates are based on average assessments for applicable felony cases and include indigence and collection rate adjustments; however, because fines and fees are subject to judicial discretion, and the timing of payments by offenders may spread across multiple years, the actual revenue impact may vary from this estimate. Criminal fine and fee revenue is subject to TABOR.

**Table 3**  
**Fine and Fee Revenue Impacts Under Bill 1\***

Fine/Fee	Fine/Fee Amount	Maximum Change	Projected Change**	FY 2020-21 Revenue Impact	FY 2021-222 Revenue Impact
Felony Fine	\$10,000	(180)	(18)	(\$135,000)	(\$180,000)
Court Costs	\$14	(2,348)	(235)	(\$2,465)	(\$3,287)
Court Security Surcharge	\$5	(2,348)	(235)	(\$881)	(\$1,174)
Rural Substance Surcharge	\$5	(2,348)	(235)	(\$792)	(\$1,056)
Probation Supervision	\$1,200	(642)	(77)	(\$69,336)	(\$92,448)
<b>Total</b>				<b>(\$208,474)</b>	<b>(\$277,965)</b>

\* Totals may not sum due to rounding.

\*\* Fine penalties are not assessed or collected in the majority of felony cases due to offenders' inability to pay.

## State Expenditures

On net, this bill increases state General Fund expenditures starting in FY 2020-21. These costs are primarily in the DHS, which are partially offset by savings in the DOC. While this estimate projects a net cost increase, the long term expenditure impacts of the bill depend on numerous factors and key implementation details which are currently unknown. A summary of the preliminary estimates of costs and savings under the bill are provided below. Table 4 provides an accounting of the potential costs and savings based on the assumed phase-in rate of the transition to DYS listed in the Assumptions section.

- **Trial courts — Judicial Department.** Costs in the Judicial Department will increase by **\$6.1 million in FY 2020-21 and \$5.6 million per year thereafter** to hold hearings concerning the transfer of young adult cases to the juvenile courts. This figure is based on the need for approximately 18 new judges and 54 support staff to hold an additional 8,500 hearings per year.
- **Division of Youth Services.** Costs in the DHS for young adults committed to DYS facilities may increase by **up to \$150 million per year and more than 1,200 FTE** when the bill is fully phased in by FY 2024-25. This cost estimate extrapolates current DYS costs and more than doubles the existing costs for managing the commitment population. As stated in the Assumptions section, these impacts are assumed to phase-in over a five-year period as bed space in the DYS facilities comes online. Costs will vary depending on the exact number of young adults transferred to the juvenile system, the actual commitment periods, services

provided to offenders, and numerous other factors. The DHS will also have increased expenditures related to administration and human resources due to the significant staffing increase under the bill.

- **Capital construction — DHS.** Capital construction costs may increase significantly for the DYS to build new facilities. Assuming a cost of \$175,000 per bed, facility costs could be **up to \$130 million** incurred over the next four fiscal years. However, costs could be mitigated to the extent that portions of existing DOC facilities or private prison facilities can be converted to use for young adult offenders. The use of contract placements could also reduce capital construction costs.
- **Department of Corrections.** Costs in the DOC will decrease from shifting young adults to DYS, reducing the sentencing ranges for the young adult offenders that remain in DOC, and eliminating probation revocation for technical violations for young adults. Based on the average lengths of stay for the 1,250 young adults currently sentenced to DOC, savings could range from **approximately \$5 million to \$15 million per year in initial years**, based on an average daily bed reduction ranging from 175 to 400 beds. Over a 7 to 10 year period, the average daily bed population could significantly decrease, potentially by around 2,200 beds compared to current law (out of an average inmate population of around 20,000), resulting in potential operational savings for DOC of **approximately \$90 million**, with maximum savings being realized around FY 2027-28, several years after DHS has fully ramped up its DYS capacity for serving young adult offenders.
- **Probation — Judicial Department.** The bill increases the number of young adult offenders sentenced to and remaining on probation, which will increase costs in the Judicial Department by **approximately \$2.1 million per year** starting in FY 2021-22. This is based on about 25 new probation officers and 4 support staff needed to provide probation supervision to an additional 1,387 offenders (856 new probation cases as a result of young adult offenders with no prior convictions being sentenced to probation and 531 young adult offenders with no prior convictions being sentenced to probation instead of an alternative sentence as required by this bill).
- **Parole.** The bill impacts both the timing and costs of parole for young adult offenders, both in the DOC and for those shifted to the DYS. Given the numerous variables, parole costs have not been estimated in this preliminary analysis.

**Table 4**  
**Approximate Costs and Savings Under Bill 1**

	FY 2020-21	FY 2021-22	FY 2023-24	FY 2024-25
DYS Increase	-	\$30 million	\$120 million	\$150 million
DOC Decrease	-	(\$7 million)	(\$40 million)	(\$55 million)
Capital Construction	\$35 million	\$35 million	\$30 million	-
Trial Courts	\$6.1 million	\$5.6 million	\$5.6 million	\$5.6 million
Probation	\$0.1 million	\$2.1 million	\$2.1 million	\$2.1 million
<b>Total Cost</b>	<b>\$41.2 million</b>	<b>\$65.7 million</b>	<b>\$117.7 million</b>	<b>\$102.7 million</b>

\* FY 2022-23 excluded due to space limitations.

**Other impacts.** In addition to the primary impacts discussed above, the bill will have several other impacts, as outlined below.

- *Juveniles convicted as adults program — DOC.* This bill makes young adults eligible to participate in the juveniles convicted as adults program which will increase program costs. Because such programming is optional, it is assumed that additional appropriations will be requested through the annual budget process based on actual young adult program participation.
- *Computer system modifications.* The DOC will require computer system updates to reflect the new young adult sentencing grid. This is estimated to cost about \$55,000 in FY 2020-21, with funds for this reappropriated from the DOC to the Office of Information Technology.
- *TABOR refunds.* The bill is expected to decrease state General Fund obligations for TABOR refunds by \$208,474 in FY 2020-21 and \$277,965 in FY 2021-22. Under current law and the September 2019 Legislative Council Staff forecast, the measure will correspondingly decrease the amount refunded to taxpayers, which will first be issued via reimbursements to local governments, followed by sales tax refunds made available on income tax returns for tax years 2021 and 2022, depending on the total amount to be refunded each year.
- *Centrally appropriated costs.* Pursuant to fiscal note and Joint Budget Committee policy centrally appropriated costs for bills involving more than 20 FTE are appropriated in the bill, rather than through the annual budget process. These costs are included in the estimates in Table 4 and will be further detailed in a future fiscal note.

## Local Government

This bill will increase local government workload and costs in several ways. The exact impact to a particular local government will vary depending on the number of cases within its jurisdiction.

**District Attorneys.** District Attorney costs will increase to participate in hearings to consider whether to transfer a young adult felony case to juvenile court. Some districts may require additional attorney and support staff to account for this increased workload.

**Counties.** County court facility and sheriff costs will increase to retrofit or build courtrooms for new magistrates and office space for support staff, as well as to hire new sheriff deputies to provide support for the new magistrates.

## Departmental Differences

The DHS estimates ongoing costs of \$375 million per year and an increase of more than 3,000 FTE when the bill is fully implemented. Further, the DHS estimates capital construction costs of more than \$950 million, including site acquisition and building construction. The DOC estimates costs of about \$74,000 in FY 2020-21 and savings of \$1.8 million in FY 2021-22. The fiscal note provides an independent estimate for several reasons, as discussed below. Further, this analysis aims to provide a realistic, system-wide estimate of costs and savings under the bill, both in the initial years of implementation and over the longer term, that accounts for the impacts across all departments.

Concerning the DHS estimate, it is likely that the department overestimates the number of young adults that would transfer to the juvenile system and the associated costs, both for operating and capital construction. The DHS capital construction estimate assumes that a total of 32 facilities with a capacity of 40 beds each would be needed. The fiscal note significantly reduces the operating cost so it is more in line with current spending on youth services. Likewise, the capital construction cost is also lowered, as further planning and assessment is required to better understand how this bill will impact the facility needs of both the DOC and DHS. The capital construction costs used in the fiscal note assume that DYS facilities will have similar costs as recently built DOC facilities on a per bed basis.

The DOC estimate primarily focuses on the changes to sentencing ranges under the bill and how DOC bed costs and parole are impacted over the first two fiscal years. However, the fiscal note believes this estimate does not fully account for all impacts of the bill. If 940 young adults, which represent more than 15 percent of the annual admissions to the DOC, are shifted to the DYS instead, this will have a significant impact on the operating costs of the DOC and its \$975 million budget. Many of the felony offenses eligible for transfer to the DYS currently have multi-year lengths of stay in the DOC, so the impact on the average daily population will compound over the years as the DHS ramps up its program and more offenders are diverted. Similarly, the bill reduces the sentencing ranges by at least half for those young adult offenders that do stay in the DOC system. For these reasons, the fiscal note includes additional savings, particularly over the long term, compared to the DOC estimate.

## Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

## State Appropriations

Preliminarily, this bill requires the following General Fund appropriations for FY 2020-21:

- an increase of \$35 million to the DHS for capital construction of DYS facilities;
- an increase of \$6.2 million to the Judicial Department; and
- an increase of \$55,000 to the DOC reappropriated to the OIT.

## State and Local Government Contacts

Alternate Defense Counsel  
District Attorneys  
Judicial  
Sheriffs

Corrections  
Human Services  
Public Defender

Counties  
Information Technology  
Public Safety

