



Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number: LLS 24-0813 Date: February 27, 2024
Prime Sponsors: Rep. Lynch Bill Status: House Judiciary
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Bill Topic: INCREASE PENALTY POSSESSION OF SYNTHETIC OPIATES

Summary of Fiscal Impact: [X] State Revenue [ ] State Transfer [X] Local Government
[X] State Expenditure [X] TABOR Refund [ ] Statutory Public Entity

The bill makes possessing fentanyl, carfentanil, benzimidazole opiate, or an analog thereof—no matter the amount and no matter if the person knowingly possessed the substance—a level 4 drug felony. Starting in FY 2024-25, the bill increases state revenue and expenditures and decreases local revenue and expenditures.

Appropriation Summary: For FY 2024-25, the bill requires an appropriation of \$901,284 to the Judicial Department.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under HB 24-1306

Table with 4 columns: Category, Sub-category, Budget Year FY 2024-25, and Out Year FY 2025-26. Rows include Revenue (General and Cash Funds, Total Revenue), Expenditures (General Fund, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (TABOR Refund, General Fund Reserve).

## **Summary of Legislation**

Since July 1, 2022, a person who knowingly possesses more than one gram of fentanyl, carfentanil, benzimidazole opiate, or an analog thereof commits a level 4 drug felony. Possession of less than 1 gram is a level 1 drug misdemeanor for a first offense and a level 4 drug felony for a second offense. Unknowingly possessing 1 to 4 grams of the above substances is a level 1 drug misdemeanor.

Starting July 1, 2024, this bill makes possessing fentanyl, carfentanil, benzimidazole opiate, or an analog thereof—no matter the amount and no matter if the person knowingly possessed the substance—a level 4 drug felony.

## **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. Using Judicial Department data, 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.

**Possession of less than 1 gram.** This bill reclassifies the existing offense of possessing less than 1 gram of fentanyl, carfentanil, benzimidazole opiate, or an analog thereof from a level 1 drug misdemeanor to a level 4 drug felony. Because this offense took effect on July 1, 2022, there is only one year of data. In FY 2022-23, 498 have been convicted and sentenced for this offense at the state level. Of the persons convicted, 358 were male, 139 were female, and 1 did not have a gender identified. Demographically, 428 were White, 42 were Black/African American, 14 were Hispanic, 3 were Asian, 5 were American Indian, 2 were classified as "Other," and 4 did not have a race identified.

**Unknowing possession.** This bill reclassifies the existing offense of unknowingly possessing fentanyl, carfentanil, benzimidazole opiate, or an analog thereof from a level 1 drug misdemeanor to a level 4 drug felony. Because this offense took effect on July 1, 2022, there is only one year of data. In FY 2022-23, 27 individuals have been convicted and sentenced for this offense at the state level. Of the persons convicted, 19 were male, and 8 were female. Demographically, 23 were White, 3 were Black/African American, and 1 was Hispanic.

Assumptions on criminal justice impacts of the bill are described in the following section. Visit [leg.colorado.gov/fiscalnotes](https://leg.colorado.gov/fiscalnotes) for more information about criminal justice costs in fiscal notes.

## **Assumptions**

By increasing the offenses listed above from misdemeanors to felonies, cases will shift from Denver County Court, which is administered and funded by the City and County of Denver, to Denver District Court, which is administered and funded by the state. This will increase costs in the state's trial courts and the state's probation department. Assumption on the number of impacted cases are as follows.

- **Trial courts.** In calendar year 2023, there were 863 misdemeanor filings related to synthetic opiates in Denver County Court. Under the bill, these cases will shift to Denver District Court, increasing the number of cases heard in state court by the same amount. A district judge can hear 936 drug felony cases per year.
- **Probation.** From calendar year 2022 through 2023, there were, on average, 203 level 1 drug misdemeanor cases per year involving synthetic opiates that were sentenced to probation by Denver County Court. It is assumed that under the bill, these sentences will be supervised by the probation division of Denver District Court.
- **Incarceration.** Based on an analysis of Judicial Department data conducted by Legislative Council Staff, about 5 percent of the level 1 drug misdemeanor cases outlined in the bill receive a sentence to jail. The fiscal note assumes that incarceration decisions are based on circumstances of the crime and the offender, rather than the specific offense classification. Therefore, the fiscal note assumes that five percent of the above cases may be eligible for a sentence to the Department of Corrections (DOC), or about 26 cases. However, Section 18-18-104.5, 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. Based on this, the fiscal note assumes that most sentenced will be to probation, or to other alternative sentencing and that any increase in DOC sentences will be minimal.

## State Revenue

The bill will increase state revenue by an estimated \$118,000 in FY 2024-25 and \$186,000 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 \$1,184 more in criminal fines and fees than level 1 drug misdemeanors. In addition, the additional persons sentenced to probation from the Denver County Court will pay the \$50 supervision fee to the state, instead of Denver County Court. This revenue increase is based on the sentencing assumptions in the outlined above, and factor in assumed indigence 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 in the Judicial Department by \$1.1 million in FY 2024-25 and \$940,000 in FY 2025-26, paid from the General Fund. Expenditures are shown in Table 2 and detailed below.

**Table 2  
Expenditures Under HB 24-1306**

	FY 2024-25	FY 2025-26
<b>Judicial Department – Trial Courts</b>		
Personal Services	\$372,798	\$372,798
Operating Expenses	\$7,398	\$7,398
Capital Outlay Costs	\$104,289	\$1,600
Centrally Appropriated Costs <sup>1</sup>	\$78,969	\$78,969
FTE – Personal Services	3.6 FTE	3.6 FTE
<b>Trial Courts Subtotal</b>	<b>\$563,454</b>	<b>\$460,765</b>
<b>Judicial Department – Probation</b>		
Personal Services	\$367,198	\$367,198
Operating Expenses	\$15,909	\$15,909
Capital Outlay Costs	\$37,670	\$2,400
Centrally Appropriated Costs <sup>1</sup>	\$95,562	\$95,562
FTE – Personal Services	5.0 FTE	5.0 FTE
<b>Probation Subtotal</b>	<b>\$516,339</b>	<b>\$481,069</b>
<b>Total</b>	<b>\$1,079,793</b>	<b>\$941,834</b>
<b>Total FTE</b>	<b>8.6 FTE</b>	<b>8.6 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Judicial Department – Trial Courts.** Based on the number of cases outlined in the Assumptions Section and the number of drug cases a district judge can handle, the Judicial Department requires 0.9 FTE magistrate to hear the estimated additional cases. In accordance with Judicial Department common policies, each magistrate requires support staff at a 3:1 ratio, resulting in the need of an additional 2.7 FTE support staff, for a total increase of 3.6 FTE. Magistrates also receive an additional \$4,420 in operating expenses for robes, law library set up and maintenance, and travel, and an additional \$77,609 in capital outlay for a courtroom, conference room, and AV equipment.

**Judicial Department – Probation.** Based on the estimated number of probation cases moving from Denver County Court to district court, the probation division will require 3.7 FTE probation officers to supervise the additional cases, and to conduct more pre-sentence investigations. In accordance with Judicial Department common policies, each probation officer requires a supervisor at a 1:6 ratio and support staff at a 1:5 ratios; resulting in a need of an additional 1.3 FTE, or 5.0 FTE total. Probation officer and supervisor FTE receive an additional \$1,670 in operating costs for safety equipment and travel.

**Department of Corrections.** To the extent that this bill increases the number of persons sentenced to prison for possession of fentanyl, costs will increase. However, as discussed in the Assumptions Section, 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.

**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 Table 2.

## Other Budget Impacts

**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 2023 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2025-26. 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.

**General Fund reserve.** Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

## Local Government

**Denver County Court.** Beginning in FY 2024-25, revenue and expenditures in Denver County Court will decrease due to cases moving from Denver County Court to Denver District Court. Denver County Court is administered and funded by the City and County of Denver.

**District attorney offices.** In addition, workload for district attorney offices will increase to the extent felony cases take longer to prosecute than misdemeanor cases. District attorney offices are funded by the counties within the district attorney's judicial district.

## 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, 2024.

## State Appropriations

For FY 2024-25, the bill requires a General Fund appropriation of \$905,262 to the Judicial Department, and 8.6 FTE.

**State and Local Government Contacts**

Corrections

District Attorneys

Judicial

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The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit the [General Assembly website](#).