SB 19-014

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

Drafting Number:	LLS 19-0047	**Date:**	January 17, 2019
Prime Sponsors:	Sen. Coram Rep. Carver	**Bill Status:**	Senate Business
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Bill Topic: ORGANIZED RETAIL THEFT PREVENTION

Summary of Fiscal Impact:

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

This bill creates the crime of retail theft with special circumstances 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 reflects the introduced bill.

Summary of Legislation

This bill creates the crime of retail theft with special circumstances. A person commits retail theft with special circumstances, a class 5 felony, if he or she:

- at the time of the theft, is in possession of an item designed to overcome or bypass retail security systems; or
- utilizes an organized effort of multiple persons to facilitate the theft with the intent to resell the items stolen. The use of a cellular phone during the theft, constitutes evidence of an organized effort.

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 2 misdemeanor and a class 6 felony 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 retail theft with special circumstances which is a class 5 felony. 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 with the remaining receiving some form of 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 Department of Corrections 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. Under current law, an offender suspected of retail theft using an item to overcome security could be charged with possession of burglary tools. Also under current law, an offender suspected of organized retail theft with intent to sell could be charged with criminal conspiracy which is a class 6 felony, but can be up to a class 2 felony depending on the circumstance of the crime. Because offenders convicted of the retail theft crimes created by this bill can be already be charged with a similar felony offense under current law this analysis assumes any impacts resulting from retail theft with special circumstances will be minimal. Additionally, concerning 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 felony of retail theft with special circumstances 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 5 felony is $3,000 to $750,000 (retail theft) and the fine penalty for a class 2 misdemeanor is $250 to 1,000 with a subsequent offense being a felony 6 with a fine range of $1,000 to $100,000 (secondhand dealer). 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 increases 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 process additional criminal case filings. 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 class 5 felony retail theft or a class 6 felony subsequent offense for failure to disclose sales by a secondhand retailer, 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 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 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 that additional secondhand dealers are sentenced to county jail, 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.

State and Local Government Contacts

Corrections	Counties	District Attorneys
Information Technology	Judicial	Municipalities
Regulatory Agencies		