



Fiscal Impact Statement

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

INITIATIVE 85: PENALTIES FOR FENTANYL CRIMES

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Summary Information

Overview. The measure increases penalties for crimes related to selling and possessing synthetic opiates.

Types of impacts. The measure is projected to affect the following areas:

- State Revenue
- State Expenditures
- TABOR Refunds
- Local Government

Disclaimer. This initial fiscal impact statement has been prepared for an initiative approved for petition circulation by the Secretary of State. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the ballot information booklet (Blue Book) if new information becomes available. Any appropriations required to implement this measure will be addressed through the annual or supplemental budget process if this measure is approved by voters.

Table 1
State Fiscal Impacts

Type of Impact	Budget Year FY 2026-27	Out Year FY 2027-28
State Revenue	\$19,516	\$71,142
State Expenditures	\$856,770	\$4,916,953
Transferred Funds	\$0	\$0
Change in TABOR Refunds	\$19,516	\$71,142
Change in State FTE	6.0 FTE	11.7 FTE

Fund sources for these impacts are shown in the tables below.

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Table 1A
State Revenue

Fund Source	Budget Year FY 2026-27	Out Year FY 2027-28
General Fund	\$0	\$0
Cash Funds	\$19,516	\$71,142
Total Revenue	\$19,516	\$71,142

Table 1B
State Expenditures

Fund Source	Budget Year FY 2026-27	Out Year FY 2027-28
General Fund	\$856,770	\$4,916,953
Cash Funds	\$0	\$0
Federal Funds	\$0	\$0
Total Expenditures	\$856,770	\$4,916,953
Total FTE	6.0 FTE	11.7 FTE

Summary of Legislation

The measure increases the penalties for distributing, manufacturing, dispensing, selling, and possessing fentanyl, carfentanil, and benzimidazole opiate (synthetic opiates).

Unlawful Distribution, Manufacturing, Dispensing, or Sale

The measure makes distribution, manufacturing, dispensing, or sale of synthetic opiates a level 1 drug felony. Currently, this offense is classified as follows:

- a level 1 drug felony if the distribution, manufacturing, dispensing, or sale is of more than 50 grams of a substance with a synthetic opiate, or if someone died in relation to the distribution;
- a level 2 drug felony for if the distribution, manufacturing, dispensing, or sale is of between 4 and 50 grams of a substance that contains a synthetic opiate; or
- a level 3 drug felony for if the distribution, manufacturing, dispensing, or sale is of less than 4 grams of a synthetic opiate.

The measure also removes the immunity from criminal prosecution for the proximate cause of death if the individual reports the overdose to authorities.

Under current law, defendants convicted of a level 1 drug felony must be sentenced to a term of between 8 and 32 years. However, if the defendant is convicted of a level 1 drug felony of unlawful distribution manufacturing, dispensing, or sale of a substance with a synthetic opiate

and has been found to cause the proximate death of an individual, the defendant must be sentenced to 12 to 32 years. The measure removes this aggravating circumstance.

Possession of Synthetic Opiate

The measure makes possession of a substance with a synthetic opiate a level 3 drug felony if the person possesses 1 to 4 grams of a synthetic opiate and a level 4 treatment mandated drug felony for possession of less than 1 gram. Currently, possession of a substance with a synthetic opiate is classified as follows:

- a level 4 drug felony if a person possesses between 1 and 4 grams of a substance with a synthetic opiate in it; or
- a level 1 drug misdemeanor if a person possesses less than a gram of a substance that has a synthetic opiate in it, or if the defendant establishes they did not know a controlled substance had a synthetic opiate.

Additionally, the measure removes the possibility of vacating a felony for possession of a synthetic opiate, and reinstates habitual criminal punishment provision for level 4 drug felonies for possession of a synthetic opiate.

Comparable Crime Analysis

The following section outlines crimes that are comparable to the offense in this measure and discusses assumptions on future rates of criminal convictions resulting from the measure. Because this offense was recently reclassified, only two years of data are available.

Unlawful Distribution, Manufacturing, Dispensing, or Sale

This measure reclassifies the existing offense of unlawful distribution, manufacturing, dispensing, or sale of less than 50 grams of a synthetic opiate from a level 2 or 3 drug felony to a level 1 drug felony. From FY 2022-23 to FY 2023-24:

- An average of 143 individuals per year (286 total) have been convicted and sentenced for the level 2 felony drug offense. Of the persons convicted, 234 were male, and 52 were female. Demographically, 233 were White, 24 were Black/African American, 17 were Hispanic, 1 was Asian, 3 were American Indian, and 8 were classified as "Other."
- An average of 154 individuals per year (307 total) have been convicted and sentenced for the level 3 felony drug offense. Of the persons convicted, 227 were male, and 80 were female. Demographically, 237 were White, 47 were Black/African American, 14 were Hispanic, 4 were Asian, 1 was American Indian, and 4 were classified as "Other."

This measure also removes the enhanced sentencing for aggravating circumstances for the level 1 drug felony of unlawful distribution, manufacturing, dispensing, or sale of more than 50 grams of a synthetic opiate. From FY 2022-23 to FY 2023-24:

- An average of 40 individuals per year (81 total) have been convicted and sentenced for this offense. Of the persons convicted, 73 were male, and 8 were female. Demographically,

69 were White, 3 were Black/African American, 7 were Hispanic, and 1 did not have a race identified. It is unknown how many of these sentences include a sentence enhancer due to the aggravating circumstance of causing death.

Possession of Synthetic Opiate

This measure reclassifies the existing offenses of unlawful possession of less than a gram of a substance with a synthetic opiate, and possession of 1 to 4 grams of a substance with a synthetic opiate where the defendant was unaware from a level 1 drug misdemeanor to a level 4 drug felony. From FY 2022-23 to FY 2023-24:

- An average of 716 individuals per year (1,431 total) have been convicted and sentenced for possession of less than a gram of a substance with an opiate offense. Of the persons convicted, 980 were male, 447 were female, and 4 did not have a gender identified. Demographically, 1,209 were White, 129 were Black/African American, 48 were Hispanic, 8 were Asian, 14 were American Indian, 18 were classified as "Other," and 5 did not have a race identified.
- An average of 28 individuals per year (56 total) have been convicted of possessing 1 to 4 grams of a substance with a synthetic opiate in it, and did not know the substance contained a synthetic opiate. Of the persons convicted, 36 were male, 19 were female, and 1 did not have a gender identified. Demographically, 49 were White, 3 were Black/African American, 3 were Hispanic, and 1 was classified as "Other."

This measure also reclassifies the existing offense of unlawful possession of 1 to 4 grams of a substance with a synthetic opiate from a level 4 drug felony to a level 3 drug felony. From FY 2022-23 to FY 2023-24, an average of 247 individuals per year (494 total) have been convicted of this offense. Of the persons convicted, 354 were male, 138 were female, and 2 did not have a gender identified. Demographically, 405 were white, 58 were black/African American, 18 were Hispanic, 2 were Asian, 3 were American Indian, 5 were classified as "Other", and 3 did not have a demographic identified.

Assumptions

The measure impacts the criminal justice system in four ways. Assumptions for each of these impacts are outlined below.

1. It will increase the time of incarceration for level 2 and level 3 drug felonies by increasing the classification for these crimes to level 1 drug felonies.
2. For those not currently incarcerated for level 2 and 3 drug felonies, the measure's reclassification to a level 1 drug felony requires a mandatory DOC sentence.
3. By reclassifying a level 4 drug felony to a level 3 drug felony for possession, the measure will increase incarceration time for the level 4 drug felonies.
4. By reclassifying a level 1 drug misdemeanor to a level 1 drug felony, costs will shift from Denver County Court, which is funded locally, to Denver District Court, which is state-funded.

Increased Incarceration

Based on the sentencing data detailed in the Comparable Crime Analysis section, estimates from the DOC, and 2024 average length of stay data, the fiscal note makes the following assumptions.

Of the 143 individuals convicted for the existing level 2 drug felony distribution offense:

- 90 individuals currently sentenced to DOC will have sentences lengthened from an average of 37 months to 61 months as a result of the reclassification to a level 1 drug felony; and
- the remaining 53 individuals will be sentenced to the DOC under the measure.

Of the 154 individuals convicted for the existing level 3 drug felony distribution offense:

- 70 individuals currently sentenced to the DOC will have sentences lengthened from an average of 24 months to 61 months as a result of the reclassification to a level 1 drug felony; and
- the remaining 84 individuals will be sentenced to the DOC under the measure.

Of the 247 individuals convicted for the existing level 4 drug felony unlawful possession of 1 to 4 grams of a substance with a synthetic opiate:

- 58 individuals currently sentenced to the DOC will have sentences lengthened from an average of 9 months to 24 months as a result of the reclassification to a level 3 drug felony.

Of those sentenced for the current level 1 drug misdemeanor for possession, the fiscal note assumes that a minimal amount of individuals will be sentenced to the DOC under the measure's level 4 drug felony for possession. This is based on an analysis of Judicial Department data conducted by Legislative Council Staff that shows about 5 percent of the level 1 drug misdemeanor sentences involve jail. Additionally, Section 18-1.3-104.5, 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.

Cases from the City and County of Denver

In the last two years, the Denver County Court has seen an annual average of 470 cases with a level 1 drug misdemeanor possession of less than 1 gram of a substance with a synthetic opiate charge. Due to the measure's reclassification of the offense, these cases will be prosecuted in Denver District Court, which is funded and administered by the state.

Visit the [General Assembly website](#) for more information about criminal justice costs in fiscal notes.

State Revenue

The measure will increase state revenue by an estimated \$20,000 in FY 2026-27 and \$72,000 in FY 2027-28 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 \$2,084 more in criminal fines and fees than level 1 drug misdemeanors. This revenue increase is based on the sentencing

assumptions in the outlined above, and factor in assumed indigency and collection rates. Revenue increases in the second year due to collections from assessments from the previous years.

State Expenditures

The measure increases state expenditures by \$857,000 in FY 2026-27, \$4.9 million in FY 2027-28, and by similar amounts ongoing. These costs will be incurred in the Judicial Department, the Office of the State Public Defender, and the Department of Corrections as shown in Tables 2 to 2C and described in the sections below. All costs are paid from the General Fund.

Table 2
State Expenditures
All Departments

Department	Budget Year FY 2026-27	Out Year FY 2027-28
Judicial Department	\$267,680	\$265,415
Office of the State Public Defender	\$589,090	\$1,023,599
Department of Corrections	\$0	\$3,627,939
Total Costs	\$856,770	\$4,916,953

Judicial Department

The measure increases expenditures in the Judicial Department to hire additional court staff, and will impact Division of Probation workload. Costs in FY 2026-27 are prorated for a January 1 start date.

Court Staff Impact

Based on the assumed number of 470 Denver County Court cases moving to Denver District Court, as outlined in the Assumptions section, the Judicial Department will require 2.0 FTE. One judge can handle about 936 drug felony cases, and each judge requires a 1-to-3 ratio of support staff. This results in a need of 0.5 FTE magistrate, and 1.5 FTE support staff. In addition to standard operating and capital outlay costs, magistrates also receive an additional \$4,420 in operating expenses for robes, law library set up and maintenance, and travel.

Probation

Workload in the Probation Division is impacted in two ways. First, expenditures will decrease as a result of the measure's reclassification of several offenses to level 1 drug felonies, since individuals sentenced to probation under current law will instead be sentenced to the DOC. Second, expenditures will increase due to cases moving from Denver County Court probation to

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Denver District Court probation. The expected increase and decrease of cases is expected to even out resulting in a minor change in workload.

Table 2A
State Expenditures
Judicial Department

Cost Component	Budget Year FY 2026-27	Out Year FY 2027-28
Personal Services	\$121,142	\$215,122
Operating Expenses	\$2,466	\$4,240
Capital Outlay Costs	\$119,140	\$1,200
Supplemental Insurance	\$24,932	\$44,853
Total Costs	\$267,680	\$265,415
Total FTE	1.1 FTE	2.0 FTE

Office of the Public Defender

Starting in FY 2026-27, the measure increases expenditures in the Office of the Public Defender (OSPD) by about 500,000 and \$1.0 million per year starting in FY 2027-28 to hire additional staff to defend indigent offenders, as described below. Costs in FY 2026-27 are prorated for a January 1 start date.

Staff

By increasing the crime classification level and mandating sentences to the DOC, the OSPD requires additional attorneys to handle more complex and longer cases. One public defender can annually handle a caseload of 64 level 1 drug felony cases, 142 level 2 drug felony cases, 199 level 3 drug felony cases, and 310 level 4 drug felony or level 1 drug misdemeanor cases. The measure is assumed to shift 593 caseloads to level 1 drug felony cases, resulting in the need for an additional 5.3 FTE.

The addition of 5.3 public defenders requires 4.4 FTE for support staff, including investigators (at a 1-to-3 attorney ratio), legal assistants (at a 1-to-6 attorney ratio), administrative assistants (at a 1-to-4 attorney ratio), and central staff (at 4.5 percent of trial office staff). The fiscal note assumes all staff will start August 1.

Table 2B
State Expenditures
Office of the State Public Defender

Cost Component	Budget Year FY 2026-27	Out Year FY 2027-28
Personal Services	\$406,493	\$804,880
Operating Expenses	\$6,272	\$12,416
Capital Outlay Costs	\$66,700	\$0
Attorney Registration and Training	\$10,950	\$10,950
Centrally Appropriated Costs	\$98,675	\$195,353
Total Costs	\$589,090	\$1,023,599
Total FTE	4.9 FTE	9.7 FTE

Department of Corrections

Based on the assumptions provided in the Comparable Crime Analysis section, this measure increases prison operating costs for the DOC by a total of \$44.6 million over the five-year period beginning in FY 2026-27. The fiscal note assumes no prison 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. Once an offender is released from prison, he or she is assigned to parole. The parole impact is assumed to first occur in FY 2026-27. Table 2C shows the estimated cost of the measure over the next five fiscal years.

Table 2C
Prison and Parole Operating Costs

Fiscal Year	Prison ADP Impact	Prison Cost	Parole ADP Impact	Parole Cost	Total Cost
FY 2026-27	-	-	-	-	-
FY 2027-28	151.36	\$3,748,344	-14.36	-\$120,405	\$3,627,939
FY 2028-29	346.58	\$8,583,017	-49.86	-\$418,197	\$8,164,820
FY 2029-30	549.58	\$13,610,362	-55.99	-\$469,641	\$13,140,721
FY 2030-31	842.82	\$20,872,524	-146.23	-\$1,226,547	\$19,645,977
Total Five-Year Cost		\$46,814,247		-\$2,234,791	\$44,579,457

ADP=average daily population.

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 \$150 million would be required to increase prison

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bed space in line with the estimated increase in prison population under this measure. If the General Assembly determines that additional prison bed space is needed, this measure 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.

TABOR Refunds

The measure 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 June 2025 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, increased cash fund and General Fund revenue will reduce the amount of General Fund available to spend or save.

Local Government

The measure is expected to increase local government workload and costs, 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

By reclassifying crimes to a higher penalty level, the measure will increase workload and costs for district attorneys to prosecute these cases. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

County Jails

By moving a misdemeanor to a felony, the measure may decrease expenditures to county jails. The exact decrease is unknown. Jails are funded by county governments.

Denver County Court

The measure decreases expenditures to Denver County Courts due to moving cases from Denver County Court, which is funded by the City and County of Denver, to Denver District Court, which is funded by the state.

Effective Date

If approved by voters at the 2026 general election, this measure takes effect on January 1, 2027.

State and Local Government Contacts

Corrections	Judicial
District Attorneys	Sheriffs

Other Sources Considered

None submitted