



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2025 Biennium

**Bill information:**

SB0095 - Generally revise theft laws (Usher, Barry )

**Status:** As Introduced

- Significant Local Gov Impact     
 Needs to be included in HB 2     
 Technical Concerns  
 Included in the Executive Budget     
 Significant Long-Term Impacts     
 Dedicated Revenue Form Attached

### FISCAL SUMMARY

	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>
<b>Expenditures:</b>				
General Fund - DoC	\$238,938	\$931,266	\$1,417,624	\$1,442,456
General Fund - OPD	\$107,849	\$107,849	\$109,467	\$111,109
<b>Revenue:</b>				
General Fund - MHP	\$13,600	\$13,600	\$13,600	\$13,600
<b>Net Impact-General Fund Balance:</b>	<u>(\$333,187)</u>	<u>(\$1,025,515)</u>	<u>(\$1,513,491)</u>	<u>(\$1,539,965)</u>

**Description of fiscal impact:** SB 95 amends the crime of theft in 45-6-301, MCA, by adding insurance fraud or diversion or misappropriation of insurance premiums and amending the penalty section. The bill also amends 45-6-309, MCA, regarding theft of rented or leased property that exceeds \$1,500 in value by removing second and subsequent convictions and increasing the penalty to a 10-year prison term. The bill also amends the penalty sections of 45-6-316, MCA, by increasing the penalty for Issuing Bad Checks as part of a common scheme for cash or to obtain property, labor, or services valued more than \$1,500. The bill proposes no distinction between the 1<sup>st</sup> or subsequent convictions or valuation; rather, the penalty would be a fine up to \$50,000 and/or imprisonment of up to 10 years. Section 45-6-317, MCA, deceptive practices, is similarly amended. These changes could significantly increase the number of felony convictions, resulting in an increase in persons incarcerated or supervised by the Department of Corrections (DOC). Adding jail time to misdemeanor offenses will increase Office of Public Defender (OPD) workload. SB 95 will provide a slight increase in general fund revenue due to increased fines.

## FISCAL ANALYSIS

### Assumptions:

#### **Department of Corrections (DoC)**

1. SB 95 adds insurance fraud or diversion or misappropriation of insurance premiums to the definition of the crime of Theft. It also amends the penalties for Theft of Rented or Leased Property; Issuing Bad Checks and Deceptive Practices; and Forgery. These crimes all fall into the classification of property crimes.
2. Using a 3-year average (2019, 2020, and 2022), the typical prison term for property crimes is 4.3 years, and the typical probation term is 2.5 years. During these years, there were approximately 1,354 annual convictions for property crimes. These averages exclude 2021, as that year was an anomaly for all crimes due to the impacts of the COVID-19 pandemic.
3. For purposes of this fiscal note, the department assumes that the addition to the definition of Theft will result in an increase to offenders under DoC supervision by an amount that is equivalent to 1% of the annual convictions for property crimes. This equates to an increase of 14 offenders.
4. The department assumes that 50% of those offenders will serve the average prison sentence, and 50% will serve the average probation sentence. The department assumes that those sentences will begin 6 months after the start of the fiscal year, on January 1, 2024.
5. SB 95 would increase the maximum penalty for “failure to return rented or leased personal property that exceeds \$1,500 in value”. There are approximately 2.7 convictions for this crime each year. The department estimates that this will result in 1 additional incarceration per year, and 1 additional offender under probation and parole supervision per year. It is assumed these sentences will begin 6 months after the start of the fiscal year, on January 1, 2024.
6. SB 95 would increase the maximum penalty for “Issuing a bad check”. There are approximately 48 convictions for this crime each year. The department estimates that this will result in 1 additional incarceration per year (2% of total convictions), and 5 additional offenders under probation and parole supervision per year (10% of total convictions). It is assumed these sentences will begin 6 months after the start of the fiscal year, on January 1, 2024.
7. SB 95 would increase the maximum penalty for “Deceptive Practices”. There are approximately 54 convictions for this crime each year. The department estimates that this will result in 1 additional incarceration per year (2% of total convictions), and 5 additional offenders under probation and parole supervision per year (10% of total convictions). It is assumed these sentences will begin 6 months after the start of the fiscal year, on January 1, 2024.
8. SB 95 would increase the maximum penalty for “forgery”. There are approximately 74 convictions for this crime each year. The department estimates that this will result in 1 additional incarceration per year (2% of total convictions), and 7 additional offenders under probation and parole supervision per year (10% of total convictions). It is assumed these sentences will begin 6 months after the start of the fiscal year, on January 1, 2024.
9. The average daily cost of secure care facilities in Montana is \$109.74, or \$40,055 per year.
10. The incremental cost of an additional probation and parole placement is estimated at \$62 per offender per year. This covers the cost of mileage for home visits and urinalysis test kits.
11. The average caseload of a probation & parole officer is approximately 62 offenders. Given the assumptions above, the department anticipates 25 new offenders under probation and parole supervision in FY 2024, which would result in the need for 0.40 FTE (62 offenders = 1 officer, 25/62 = 0.40 FTE required). The department anticipates 50 new offenders under probation and parole supervision in FY 2025, which would result in the need for 0.80 FTE (62 offenders = 1 officer, 50/62 = 0.80 FTE required). The department anticipates 75 new offenders under probation and parole supervision in FY 2026, which would result in the need for 1.20 FTE

(62 offenders = 1 officer, 75/62 = 1.20 FTE required). The department anticipates 93 new offenders in FY 2027, which would result in the need for 1.50 FTE (62 offenders = 1 officer, 93/62 = 1.50 FTE required).

12. The department assumes a 1.5% inflationary multiplier in FY 2026 and FY 2027.

**Department of Justice (DoJ) Montana Highway Patrol (MHP)**

13. The Montana Highway Patrol (MHP) has written a total of 1 citation for failure to return rented or leased personal property, 2 citations for deceptive practices and 8 citations for forgery. MHP assumes that an average of 2 total citations would be written each year.

14. MHP assumes the total annual fee revenue for these citations would be \$2,200 each year.

15. MHP has written an average of 1 citation for forgery exceeding \$5,000 in the last three years. MHP assumes an average of 1 citation written for this violation each year.

16. SB 95 would raise the maximum fine for forgery exceeding \$5,000 to \$50,000. MHP assumes that the one citation written for this violation would receive a lower fine of \$25,000.

17. Half of the revenue received for citations goes to the general fund and half goes to the county in which the citation is written.

18. MHP assumes that an annual increase in revenue of \$13,600 would be received. ( $\$2,200 + \$25,000 = \$27,200$ ) ( $\$27,200 / 2 = \$13,600$ ).

**Office of Public Defender (OPD)**

19. Changes adding jail to first offense misdemeanor Theft roll back legislative changes from the 2017 session, therefore, most recent data sources are the change in case numbers from FY 2017 to FY 2018.

20. OPD assumes that at least 217 new cases will beailable due to changes in sentencing laws based upon above assumption.

21. OPD assumes that 217 new cases will be represented by contracted attorneys due to case volume of OPD staff attorneys at a rate of \$71.00 per hour.

22. OPD assumes 7 hours case weight per matter.

23. OPD also assumes no increases in costs for higher jail terms for felonies of property over \$1,500.

24. The OPD impact is 217 cases x 7 hours per case x \$71.00 per hour for a total increase of \$107,849 for FY 2024 and FY 2025. An inflation rate of 1.5% will be applied over the prior year in each of the FY 2026 and FY 2027 fiscal years.

	<u>FY 2024 Difference</u>	<u>FY 2025 Difference</u>	<u>FY 2026 Difference</u>	<u>FY 2027 Difference</u>
<b><u>Fiscal Impact:</u></b>				
FTE - DoC	0.40	0.80	1.20	1.50
<b><u>Expenditures:</u></b>				
Personal Services - DoC	\$18,418	\$46,954	\$71,259	\$75,895
Operating Expenses - DoC	\$220,520	\$884,312	\$1,346,365	\$1,366,561
Operating Expenses - OPD	\$107,849	\$107,849	\$109,467	\$111,109
<b>TOTAL Expenditures</b>	<u>\$346,787</u>	<u>\$1,039,115</u>	<u>\$1,527,091</u>	<u>\$1,553,565</u>
<b><u>Funding of Expenditures:</u></b>				
General Fund (01)	\$346,787	\$1,039,115	\$1,527,091	\$1,553,565
State Special Revenue (02)	\$0	\$0	\$0	\$0
<b>TOTAL Funding of Exp.</b>	<u>\$346,787</u>	<u>\$1,039,115</u>	<u>\$1,527,091</u>	<u>\$1,553,565</u>
<b><u>Revenues:</u></b>				
General Fund (01)	\$13,600	\$13,600	\$13,600	\$13,600
State Special Revenue (02)	\$0	\$0	\$0	\$0
<b>TOTAL Revenues</b>	<u>\$13,600</u>	<u>\$13,600</u>	<u>\$13,600</u>	<u>\$13,600</u>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>				
General Fund (01)	(\$333,187)	(\$1,025,515)	(\$1,513,491)	(\$1,539,965)
State Special Revenue (02)	\$0	\$0	\$0	\$0

NO SPONSOR SIGNATURE

Sponsor's Initials

1/10

Date



Budget Director's Initials

1-9-23

Date