

PRISON/JAIL POPULATION COST ESTIMATE STATEMENT

Ninety-Sixth SESSION
2021 South Dakota Legislature

Senate Bill 189

An Act to revise and establish certain provisions related to drug crimes and enforcement and create a penalty therefor.

A prison/jail population cost estimate statement is required for SB189 because, among other matters, the bill would alter the penalties for convictions related to marijuana and its derivatives throughout chapter 22-42.

Marijuana Concentrate Manufacture and Distribution

Currently, hash is defined as the resin extracted from any part of the genus cannabis plant. It is classified as a Schedule I substance. Under Section 1 of the bill, a new definition for marijuana concentrate would be created, which would include hash.

Under SDCL 22-42-2, any person currently convicted of unauthorized manufacture, distribution, or dispensing a Schedule I substance is guilty of a Class 4 felony. Also, under SDCL 22-42-2, any person who distributes a Schedule I substance to a minor is guilty of a Class 2 felony. SDCL 22-42-2 also establishes certain mandatory minimum sentences and penalty enhancements based on certain criteria.

Section 2 of the bill would remove consideration of marijuana concentrate from SDCL 22-42-2 and charge the unauthorized manufacture, distribution, or possession with intent to distribute marijuana concentrate under Section 11 and the distribution or possession with intent to distribute marijuana concentrate to a minor under Section 12. These sections would create different classifications of this crime based on the amount of marijuana concentrate involved.

Data is tracked concerning arrests for marijuana wax. There have been no convictions under SDCL 22-42-2 in the last ten years involving marijuana wax. Because of the absence of convictions under current law, the impact on prison and jail costs is expected to be negligible.

Marijuana Concentrate Possession

Currently, under SDCL 22-42-5, any person convicted of unauthorized possession of a Schedule I substance is guilty of a Class 5 felony.

Section 3 of the bill would remove consideration of marijuana concentrate from SDCL 22-42-5 and charge the unauthorized possession of marijuana concentrate under Section 10. The bill would create different classifications of this crime based on the amount of marijuana concentrate involved.

In the last ten years, there have been 45 convictions under SDCL 22-42-5 for possession of marijuana wax, but data is not tracked according to amounts of marijuana wax involved in

these convictions. Thus, it can be expected that there could be some impact and prison and jail costs, but the amount is not readily discernible.

Ingestion of Marijuana Concentrate

Currently, under SDCL 22-42-5.1, any person convicted of ingesting an unauthorized Schedule I substance is guilty of a Class 5 felony. Section 4 of the bill would remove the penalty for ingesting marijuana concentrate from SDCL 22-42-5.1.

In the last ten years, there has been one conviction under SDCL 22-42-5.1 related to ingestion of marijuana wax with a probationary sentence. Thus, the impact on prison and jail costs is expected to be negligible.

Possession of Marijuana

Currently, SDCL 22-42-6 creates different classes of penalties based on the amount of marijuana found in a defendant's possession.

In the last ten years, there have been 11,895 misdemeanor convictions for marijuana possession and 764 felony convictions of SDCL 22-42-6.

Under Section 5 of the bill, the classifications of penalties for marijuana possession based on amounts would be amended. A comparison between current law and Section 5 is set forth below:

Class	Current	Section 5
Class 2 misdemeanor	----	More than 1 oz. but less than 8 oz.
Class 1 misdemeanor	2 oz. or less.	8 to 16 oz.
Class 6 felony	More than 2 oz. but less than ½ lb.	More than 16 oz
Class 5 felony	½ lb. but less than 1 lb.	---
Class 4 felony	1 to 10 lbs.	---
Class 3 felony	More than 10 lbs.	---

Because the bill would not penalize possession of marijuana up to one ounce and amends the penalty classifications under current law, it is estimated that there would be an impact on prison and jail costs. A comparison between the amount of marijuana in each penalty classification under current law and the bill is not readily feasible, however, because data regarding the amount of marijuana in possession convictions is not tracked beyond the penalty classification.

Distribution or Possession with Intent to Distribute Marijuana

Currently, SDCL 22-42-7 creates different classes of penalties based on the amount of marijuana distributed or possessed with the intent to distribute. SDCL 22-42-7 also creates different classes of penalties based on the amount of marijuana distributed or possessed with the intent to distribute to a minor. SDCL 22-42-7 also establishes certain mandatory minimum sentences.

In the last ten years, there have been 59 misdemeanor convictions and 899 felony convictions under SDCL 22-42-7.

Under Section 6 of the bill, the penalty classifications for distribution or possession with the intent to distribute marijuana would be amended. Section 8 of the bill would amend the penalty classifications for distribution or possession with the intent to distribute marijuana to a minor. A comparison between current law and Sections 6 and 8 is set forth below:

Class	Current	Section 6
Class 2 misdemeanor	----	More than 1 oz. but less than 2 oz.
Class 1 misdemeanor	Less than ½ oz. without consideration	2 oz. but less than 16 oz.
Class 6 felony	One oz. or less	16 oz. but less than 5 lbs.
Class 5 felony	More than 1 oz. but less than ½ lb.	----
Class 4 felony	½ lb. but less than 1 lb.	5 lbs. but less than 10 lbs.
Class 3 felony	1 lb. or more.	10 lbs. to 50 lbs.
Class 2 felony	----	More than 50 lbs.

Class	Current (to a minor)	Section 8 (to a minor)
Class 6 felony	Less than ½ oz. without consideration	Less than 1 oz.
Class 5 felony	1 oz. or less	---
Class 4 felony	More than 1 oz. but less than ½ lb.	---
Class 3 felony	½ lb. but less than 1 lb.	1 oz. but less than 8 oz.
Class 2 felony	1 pound or more.	8 oz. to 2 lbs.
Class 1 felony	----	More than 2 lbs.

Because the bill does not penalize distribution of marijuana up to one ounce when the distribution is not to a minor and would amend the penalty classifications under current law, it is estimated that there would be an impact on prison and jail costs. A comparison between the amount of marijuana in each penalty classification under current law and the bill is not readily feasible, however, because data regarding the amount of marijuana in distribution convictions is not tracked beyond the penalty classification.

Possession of Marijuana Plants

Section 9 of the bill would establish a Class 6 felony for possession of four to twelve marijuana plants, and a Class 4 felony to possess more than twelve marijuana plants.

There is no data tracked on the number of marijuana plants possessed in violation of current law. Thus, it can be expected that there could be some impact and prison and jail costs under Section 9 of the bill, but the amount is not readily discernible.

Ingestion of Intoxicating Substance

Currently under SDCL 22-42-15, ingesting any substance, except an alcoholic beverage, for the purpose of becoming intoxicated is a Class 1 misdemeanor.

Section 14 of the bill would remove the penalty for ingesting marijuana or any derivative of marijuana from SDCL 22-42-15.

In the past ten years, there have been no convictions under SDCL 22-42-15 involving only marijuana or marijuana wax. Because of the absence of convictions under SDCL 22-42-15 concerning only marijuana or marijuana wax, the impact on prison and jail costs is expected to be negligible.

Drug Free Zones

Currently under SDCL 22-42-19, any person who commits a violation of SDCL 22-42-2, unauthorized manufacture or distribution of a Schedule I substance, or a felony violation of SDCL 22-42-7, distribution or possession with intent to distribute marijuana, is guilty of a Class 4 felony. Certain mandatory minimum sentences are also required.

Section 15 of the bill would add a violation of certain sections of the bill to SDCL 22-42-19. It would add Section 8, distribution or possession with intent to distribute marijuana to a minor, Section 9, possession of marijuana plants, Section 11, manufacture, distribution, or possession with intent to distribute marijuana concentrate, and Section 12, distribution or possession with intent to distribute marijuana concentrate to a minor.

In the past ten years, there have been no convictions under SDCL 22-42-19 involving marijuana wax and 27 convictions involving a felony violation of distribution of marijuana.

It is expected that there will be an impact on prison and jail costs under Section 15 of this bill related to marijuana, but for the reasons described, that impact is not readily discernible.

APPROVED BY: /s/ Reed Holwegner
Director, Legislative Research Council

DATE: 2/17/2021
2021-FI189A