

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 amendment 189C to SB189 because, among other matters, the amendment would make certain changes to penalties provided in the bill as introduced.

The amendment would eliminate the Class 6 felony for possession of four to twelve marijuana plants and a Class 4 felony for possession of more than twelve marijuana plants provided by the bill as introduced. It was determined in the estimate statement for the bill as introduced that these penalties could have impact on prison and jail costs, but the amount was not readily discernible. Thus, removing these penalties under the amendment would have no additional prison or jail impact.

The amendment would change the crimes of distribution or possession with intent to distribute marijuana concentrate to a minor under Section 12 and distribution or possession with intent to distribute marijuana to a minor under Section 8 in the bill as introduced. Under the amendment, these penalties would apply if the distribution was to any person under the age of twenty-one. It was determined in the estimate statement for the bill as introduced that these penalties would have some impact on prison and jail costs, but that impact was not readily discernible because the amounts tracked under current penalties compared to amounts under the bill did not provide a feasible analysis. Similarly, the changes under the amendment could have some impact on prison and jail costs, but that amount is not discernible at this time.

The amendment would change the distribution penalties under Sections 6 and 11 of the bill as introduced so it would be a criminal offense to distribute any amount of marijuana or marijuana concentrate. It was determined in the estimate statement for the bill as introduced that these penalties would have some impact on prison and jail costs, but that impact was not readily discernible because the amounts tracked under current penalties compared to amounts under the bill did not provide a feasible analysis. Similarly, the changes under the amendment could have impact on prison and jail costs, but that amount is not discernible at this time.

Finally, the amendment would establish a Class 2 misdemeanor for any person under the age of twenty-one who possesses or attempts to possess marijuana; a Class 2 misdemeanor for any person under the age of twenty-one who ingests marijuana, marijuana concentrate, or any derivative of marijuana; and a Class 1 misdemeanor for any person under the age of twenty-one who possesses or attempts to possess marijuana concentrate.

As noted in the estimate statement for the bill as introduced, there have been no convictions in the last ten years under SDCL 22-42-15, ingestion of an intoxicating

substance, relating to marijuana or marijuana wax only. Furthermore, under SDCL 22-42-5.1, ingestion of an unauthorized Schedule I substance, there has been one conviction related to ingestion of marijuana wax with a probationary sentence. As related to ingestion, the impact on prison and jail costs would be expected to be negligible under the amendment.

Concerning the remainder of this penalty regarding possession and attempted possession, a comparison between the amount of drugs involved in the penalties under current law and those that would be provided by the penalties under the amendment does not provide a feasible analysis to provide an estimate, although the penalties under the amendment could have impact on prison and jail costs.

Compared with the original bill, there is no difference in prison/jail costs.

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

DATE: 2/22/2021
2021-FI189B