

PRISON/JAIL POPULATION COST ESTIMATE STATEMENT

Ninety-Sixth SESSION
2021 South Dakota Legislature

House Bill 1100

An Act to modify the medical marijuana program and to create an interim committee to recommend implementation of the medical marijuana program.

A prison/jail population cost estimate statement is provided for amendment 1100N to HB1100 because the amendment would eliminate the penalty for possession and ingestion of marijuana and its derivatives under certain circumstances.

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, starting at a Class 1 misdemeanor for two ounces or less:

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

The amendment would remove the penalty for possession of one ounce or less of marijuana by those twenty-one years or older. It would be expected for there to be a reduction in the number of Class 1 misdemeanor convictions for marijuana possession. In the last ten years, there have been 11,895 misdemeanor convictions for marijuana possession for all ages. It is unknown, however, how many convictions in the last ten years concerned one ounce or less of marijuana because data is tracked according to offense descriptions. Thus the impact is not readily discernible.

Possession of Marijuana Concentrate

Currently, under SDCL 22-42-5, any person convicted of unauthorized possession of a Schedule I substance is guilty of a Class 5 felony. Hash, a concentrated derivative of marijuana, is the resin extracted from any part of the genus cannabis plant. It is classified as a Schedule I substance. Under the amendment, hash would be included under a new definition of marijuana concentrate.

The amendment would remove the penalty for possession of eight grams or less of marijuana concentrate by those twenty-one years of age or older.

In the last ten years, there have been 45 convictions under SDCL 22-42-5 for possession of marijuana wax—the form of concentrated marijuana for which data is tracked—for all ages, 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 upon prison and jail costs, but the amount is not readily discernible.

Ingestion

Currently, under SDCL 22-42-5.1, any person convicted of ingesting an unauthorized Schedule I substance is guilty of a Class 5 felony. Also, under SDCL 22-42-15, ingesting any substance, except an alcoholic beverage, for the purpose of becoming intoxicated is a Class 1 misdemeanor.

The amendment would remove the penalties for ingesting marijuana or any derivative of marijuana from SDCL 22-42-5.1 and 22-42-15 for any person twenty-one years of age or older.

In the last ten years, there has been one conviction under SDCL 22-42-5.1 related to ingestion of marijuana wax resulting in a probationary sentence. 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 22-42-5.1 and SDCL 22-42-15 concerning only marijuana or marijuana wax resulting in a period of incarceration, the impact on prison and jail costs is expected to be negligible.

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