

PRISON/JAIL POPULATION COST ESTIMATE STATEMENT

Ninety-Seventh Session SESSION
2022 South Dakota Legislature

Senate Bill 78

An Act to revise the enhanced penalty for unauthorized manufacture, distribution, counterfeiting or possession of Schedule I or II substances.

A prison/jail population cost estimate statement is required for SB78 as the bill would mandate a minimum sentence of five years in the state penitentiary for a violation of the controlled substance distribution statute, SDCL 22-42-2, if three or more aggravating factors are involved in the violation.

SDCL 22-42-2 makes it a Class 4 felony to manufacture, distribute, or dispense a Schedule I or II substance, or possess with intent to do the same, or create or distribute or possess with intent to distribute a counterfeit Schedule I or II substance. Since 2013, SDCL 22-42-2 makes it a Class 3 felony if three or more of five items are also possessed by the violator (i.e., aggravating factors). The bill, comprised of one section amending SDCL 22-42-2, would revise the aggravated Class 3 felony violation. Specifically, the bill would:

- Expand the list of aggravating factors by two to include: multiple types of controlled substances and the violator being a leader of the conduct that involved a person under the age of eighteen;
- Increase the aggravating factor threshold of cash possessed from \$300 to \$1,000, and make use of an electronic cash application to facilitate drug transactions of \$1,000 or more an aggravating factor;
- Expand the types of bulk materials that the possession of which qualifies as an aggravating factor; specifically, materials for "weighing, selling, transporting, storing, or distributing" controlled substances "or evidence of such bulk materials"; and
- As referenced above, establish a mandatory minimum penitentiary sentence of five years that may not be suspended.

Regarding the costs of incarceration, the history of Class 3 felony convictions under SDCL 22-42-2 may be instructive. Since the adoption of this aggravated violation in 2013, Unified Judicial System data indicates that 23 Class 3 convictions have occurred, or approximately three convictions per year.

The 23 convictions have resulted in an average sentence of 1,508 days, or approximately 4.13 years. The bill would raise this average to, at minimum, a five-year term of imprisonment, or 1,824 days, while expanding the grounds for aggravation, thereby potentially increasing the number of Class 3 felony violators over an equivalent period.

Individuals serving a term of imprisonment for Class 3 felonies in a low-medium security facilities cost \$78.26 per day. Based on the above estimates, the increased operating cost

for prisons would be \$0 in the first year and, at a minimum, \$24,730.16 every ten years for each individual convicted. Assuming the continued trend of approximately three convictions each year, the overall estimated minimum operating cost impact on prisons over the first ten years would be \$370,952.40.

APPROVED BY: /s/ Reed Holwegner
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DATE: 1/21/2022
2022-FI78A
