

# **PRISON/JAIL POPULATION COST ESTIMATE STATEMENT**

Ninety-Eighth Session  
2023 South Dakota Legislature

## **House Bill 1067**

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An Act to provide for a rebuttable presumption of intent to distribute methamphetamine when in possession of more than five grams.

A prison/jail population cost estimate statement is required for HB1067 because the bill may impact the population of a state prison or jail.

Per SDCL 22-42-4.3, any individual who possesses methamphetamine, or a methamphetamine analog or immediate precursor, with the intent to manufacture, distribute, or dispense the substance, is guilty of a Class 3 felony or a Class 2 felony if the individual is in possession of certain other items. Currently, the statute does not specify what amount of the substance an individual must possess to establish the intent to manufacture, distribute, or dispense the substance. The bill would create a rebuttable presumption of intent to distribute or dispense methamphetamine, or a methamphetamine analog or immediate precursor, if the individual is in possession of more than five grams of the substance.

To estimate whether the bill would have an impact on state prison or jail populations, data is required on how many convictions under SDCL 22-42-5, which makes unauthorized possession of controlled substance a Class 6 felony, could be prosecuted under SDCL 22-43-4.3 in the future. Necessary to the analysis is the amount of substance possessed. Yet, that amount is not a relevant element to unauthorized possession of a controlled substance under SDCL 22-42-5. Such information is not currently collected by a state agency in a quantifiable format.

Further, an open question in projecting a change to the state's prison or jail populations is whether the bill would incentivize prosecuting attorneys to utilize SDCL 22-42-4.3 more often in relevant cases. Finding the answer to such a question would require survey data at the county level that cannot be compiled in a timely fashion.

Due to these challenges to perform an analysis on the effects of this bill, the projected impact on the state's prison and jail populations cannot be determined.

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DATE: 1/23/2023  
2023-FI1067A