

PRISON/JAIL POPULATION COST ESTIMATE STATEMENT

Ninety-Eighth Session
2023 South Dakota Legislature

House Bill 1170

An Act to establish mandatory sentences for certain driving while under the influence violations.

A prison/jail population cost estimate statement is required for HB1170 because it would establish multiple mandatory minimum terms of imprisonment.

The bill would amend SDCL 32-23-4.6, 32-23-4.7, and 32-23-4.9 to include minimum mandatory sentences for driving while under influence of alcohol, drug, or intoxicant ("DWI") for the fourth, fifth, sixth, or any subsequent time. Specifically, the bill would require that for an individual convicted of:

- A fourth DWI offense, the court would sentence the person to at least one year in a state correctional facility;
- A fifth or subsequent DWI offense, the court would sentence the person to at least three years in a state correctional facility; and
- A sixth or subsequent DWI offense within 15 years, including at least two within 10 years, the court would sentence the person to at least five years in a state correctional facility.

The court would not be permitted to suspend the sentences described above. Further, any person subject to one of these mandatory sentences would not be eligible for parole consideration. For the purposes of this estimate, it is assumed those currently convicted under the relevant statutes are already serving their full sentences.

Data from the Unified Judicial System indicates that since 2012:

- Per year, 131.7 people have been convicted under SDCL 32-23-4.6, a Class 5 felony, with 118.9 people going to prison for 1,034.8 days on average and 12.8 people going to jail for 102.6 days on average;
- Per year, 34.5 people have been convicted under SDCL 32-23-4.7, a Class 4 felony, with 33.2 people going to prison for 1,480.4 days on average and 1.3 people going to jail for 71.5 days on average; and
- Per year, 58.7 people have been convicted under SDCL 32-23-4.9, a Class 4 felony, with 57.1 people going to prison for 1,550.9 days on average and 1.6 people going to jail for 62.7 days on average, excluding outliers.

The bill would require anyone who would have otherwise served a jail sentence to serve a prison sentence instead. Assuming a daily cost of jail incarceration of \$96.30 per day, counties would save \$145,081 per year, with this cost shifting to the state.

The bill would further increase the expenses of the Department of Corrections. For those convicted under SDCL 32-23-4.6 and 32-23-4.7, the average sentence to date is beyond the one-year and three-year minimums mandated in the bill.

For those convicted under SDCL 32-23-4.9, the bill would require individuals with at least six DWI convictions within 15 years to serve longer sentences than those currently prescribed. This estimate assumes everyone convicted under SDCL 32-23-4.9 would be subject to the sentencing requirements of the bill. Accordingly, they would have to spend 274.1 more days in prison each, costing the Department of Corrections \$1,457,885 per year after four years at a cost of \$90.61 per day.

In total, over ten years, the estimated cost of the bill to the Department of Corrections would be \$9,700,958.

APPROVED BY: /s/ Reed Holwegner
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