

SOUTH DAKOTA LEGISLATIVE RESEARCH COUNCIL

2026 South Dakota Legislature

FISCAL NOTE 2026-FN42A

SB42, An Act to enhance the penalties for ingestion, possession, possession with intent to deliver, and delivery of a controlled substance in a state correctional facility.

SB 42 would increase the penalties for three separate crimes under state law. The first section would increase the penalty from a Class 4 felony to a Class 3 felony when an inmate of a correctional facility possesses any drug or controlled substance, except by written order from a medical professional (see SDCL 24-2-14(3)). The second section would increase the penalty for delivering, procuring to be delivered, or possessing with intent to deliver, to an inmate of a correctional facility, or depositing or concealing in or around any facility or place used to house inmates, any drug or controlled substance from a Class 4 to a Class 3 felony (see SDCL 24-2-22(3)). The third section would increase the penalty of ingesting a controlled substance or having a controlled drug or substance in an altered state in the body from either a Class 1 misdemeanor or Class 6 felony, depending on the number of violations, to a Class 5 felony if committed by an inmate under confinement in a correctional facility or a person under parole supervision (see 24-42-5.1).

As to the first section, according to the Department of Corrections, there are 22 inmates with a violation of SDCL 24-2-14(3) as their most serious crime, including 20 men and 2 women. The average amount of additional time served for a Class 3 felony compared to a Class 4 felony is 19 months for men and 12 months for women. According to the Unified Judicial System, the average sentence length for those convicted under SDCL 24-2-14(3) is 10.6 years. Accordingly, any fiscal impacts related to section one of this Act would not be seen for at least two years considering when inmates become eligible for parole per SDCL 24-15-5. In fiscal year 2025, it cost \$93.26 per day to hold an inmate in a correctional facility. Thus, as to the first section of this Act, for each individual violating SDCL 24-2-14(3), it would cost an additional \$52,091 on average. This estimate does not take into account potential inflation.

As to the second section, there are no inmates with a violation of SDCL 24-2-22(3) as their most serious crime, and there have been no convictions under this statute in the last ten years. Thus, the second section of this Act is expected to have a negligible fiscal impact.

As to the third section, because being an inmate or a parolee has not been an element of SDCL 22-42-5.1 before, there is no conviction data available to calculate the additional cost per violator. It is not known what sentences inmates and parolees would receive (up to five years per SDCL 22-6-1) and how much of their sentences they would serve. With respect to parolees, regardless of the penalty outlined in SDCL 22-42-5.1, parolees are not allowed to use drugs per their supervision agreements. Parolees found to have violated their supervision agreements can be sent back to a correctional facility already to serve the remainder of their sentences. Considering the lack of available data, the fiscal impact of the third section of this Act cannot be determined at this time.

APPROVED BY: /s/ John McCullough
Director, Legislative Research Council

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