

LEGISLATIVE INCARCERATION FISCAL IMPACT STATEMENT
 EIGHTY-NINTH SESSION
 LEGISLATIVE ASSEMBLY 2014

SENATE BILL NO. 118

AN ACT TO REVISE CERTAIN CRIMINAL PENALTIES FOR INTENTIONAL DAMAGE TO PRIVATE PROPERTY.

A legislative incarceration fiscal impact statement has been requested on SB118 due to the revision of certain penalties for intentional damage to property.

SB 118 does not change the penalties for Class 2 and Class 1 misdemeanors. It does however create two new levels of felonies for Class 6 (>\$1,000 but <\$2,500) and Class 5 (>\$2,500 but <\$5,000) which were previously part of a Class 4 felony. Additionally, it creates a new level for Class 2 (>\$500,000) which was previously part of a Class 3 felony.

Table 1 below outlines each penalty and the associated dollar ranges under existing law §22-34-1 compared to those under SB 118. Table 2 shows a breakdown of the number of convictions in FY13 by penalty under existing law and how those same offenses might have been charged if SB 18 were enacted.

Table 1.

Penalty	Current Law - SDCL 22-34-1	SB 118 - Printed Bill
Class 2 Misdemeanor	\$0 - \$400	\$0 - \$400
Class 1 Misdemeanor	\$401 - \$1,000	\$401 - \$1,000
Class 6 Felony	N/A	\$1,001 - \$2,500
Class 5 Felony	N/A	\$2,501 - \$5,000
Class 4 Felony	\$1,001 - \$100,000	\$5,001 - \$100,000
Class 3 Felony	\$100,001 - over	\$100,001 - \$500,000
Class 2 Felony	N/A	\$500,001 - over

Table 2.

Current Law - SDCL 22-34-1	SB 118 - Printed Bill	Number of Convictions in FY13
Class 2 Misdemeanor	Class 2 Misdemeanor	239
Class 1 Misdemeanor	Class 1 Misdemeanor	156
Class 4 Felony*	Class 6 Felony	9
	Class 5 Felony	3
	Class 4 Felony	9
Class 3 Felony	Class 3 Felony	0
	Class 2 Felony	0

* Data for four additional Class 4 felony convictions in FY 13 lacked a specific dollar amount and were therefore not included in this table.

Because there are no changes to Class 2 and Class 1 misdemeanors, we will focus our analysis on the revised felony penalties in SB 118.

SB 118 creates two new levels of felonies for Class 6 (>\$1,000 but <\$2,500) and Class 5 (>\$2,500 but <\$5,000) which were previously part of a Class 4 felony. Because the Act revises the penalties to Class 6 and Class 5 felonies, we believe §22-6-11 applies.

SDCL 22-6-11, which was approved as part of the 2013 Criminal Justice Initiative, states that the sentencing court shall sentence an offender convicted of a Class 5 or Class 6 felony to a term of probation. It goes on to say that a sentencing court may impose a sentence other than probation if the court finds aggravating circumstances exist that pose a significant risk to the public and require a departure from presumptive probation.

The Legislative Research Council has no way to determine the number of offenses where the court may deem the offense "aggravating" which could result in a prison or jail sentence.

As a result, estimated costs/(savings) to prisons or jails are indeterminable.

However, the estimated annual costs/(savings) and estimated costs/(savings) over a 10 year period for every one person convicted and sentenced to prison for aggravating circumstances, are outlined in the table below.

		Prison Cost		Jail Cost		Total Cost	
		Annual	10-Year	Annual	10-Year	Annual	10-Year
SB 118	Class 6 Felony	8,148	\$81,481	2,603	26,028	10,751	107,509
Current	Class 4 Felony	16,943	\$310,548	2,314	23,136	19,257	333,684
Subtotal Costs/(Savings)		(8,795)	(229,067)	289	2,892	(8,506)	(226,175)
SB 118	Class 5 Felony	11,855	\$196,601	4,700	46,995	16,555	243,596
Current	Class 4 Felony	16,943	310,548	2,314	23,136	19,257	333,684
Subtotal Costs/(Savings)		(5,088)	(113,947)	2,386	23,859	(2,702)	(90,088)
SB 118	Class 4 Felony	16,943	310,548	2,314	23,136	19,257	333,684
Current	Class 4 Felony	16,943	310,548	2,314	23,136	19,257	333,684
Subtotal Costs/(Savings)		0	0	0	0	0	0
Total Costs/(Savings)		(13,883)	(343,013)	2,675	26,751	(11,208)	(316,262)

SB 118 also creates a new level of Class 2 felony (>\$500,000) which was previously part of a Class 3 felony. While there were no convictions in FY13 of a Class 3 felony for the intentional damage to property totaling more than \$100,000, if 1 person was convicted and sentenced to prison the estimated costs/(savings) is outlined in the table below.

		<u>Prison Cost</u>		<u>Jail Cost</u>		<u>TOTAL COST</u>	
		<u>Annual</u>	<u>10-Year</u>	<u>Annual</u>	<u>10-Year</u>	<u>Annual</u>	<u>10-Year</u>
SB 118	Class 2 Felony	21,455	\$991,325	3,543	35,427	24,997	1,026,752
Current	Class 3 Felony	16,943	\$540,329	5,350	53,502	22,294	593,831
	Subtotal Costs/(Savings)	4,511	450,996	(1,808)	(18,075)	2,704	432,921

The following calculations were used to determine the estimated fiscal impact to jails and prisons:

1. The estimated annual fiscal impact for each penalty is calculated by multiplying an estimated number of convictions by the average percentage of those convicted that actually go to jail or prison. The average daily cost to incarcerate an inmate is then applied to that figure.
2. The estimated fiscal impact over a 10 year period for each penalty is calculated by multiplying the estimated annual cost by the average time served to determine the cost each year throughout the 10 year period. That amount is then applied to the number of persons sent to jail or prison over the ten year period. Projections over a period of 10 years are in today's dollars and are not adjusted for inflation.
3. The estimated costs/(savings) are calculated by taking the difference in annual costs and costs over a 10 year period between each of the penalties.

Approved: /S/ Fred Schoenfeld Date: 02/18/2014
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