

**PRISON/JAIL POPULATION COST ESTIMATE STATEMENT**  
NINETY-FIRST SESSION  
LEGISLATIVE ASSEMBLY 2016

**SENATE BILL NO. 54**

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**AN ACT TO ADOPT THE ELDER ABUSE TASK FORCE'S STATUTORY  
RECOMMENDATIONS IN ORDER TO PROTECT SOUTH DAKOTA SENIORS AND  
ADULTS WITH DISABILITIES FROM ABUSE, NEGLECT, AND EXPLOITATION.**

A prison/jail population cost estimate statement has been requested on SB54 due to the addition of emotional abuse to § 22-46-2, creating a new Class 1 misdemeanor for the crime.

Senate Bill 54 amends current South Dakota law criminalizing the abuse of an elderly or disabled person, creates a protection order and a cause of action against the abuser of an elderly or disabled person, outlines reporting standards for financial institutions that suspect financial exploitation of an elderly or disabled person, establishes details regarding civil actions in elder care, and sets new requirements for the appointment of guardians and conservators of an elderly or disabled person. This prison and jail impact statement will examine the addition of emotional abuse to § 22-46-2, creating a new Class 1 misdemeanor for the crime.

Currently, it is a Class 6 felony to physically abuse or neglect an elderly or disabled person. There have been 53 charges under § 22-46-2 from January 1, 2010 to December 31, 2015, with seven convictions in the same period of time. Each conviction was sentenced to an average of 730 days in the state penitentiary, not including suspended sentence time.

According to the National Center on Elder Abuse, roughly 7-10% of elderly persons experience abuse or neglect on a yearly basis. According to the US Census Bureau, there are roughly 128,000 people over the age of 65 in South Dakota. Assuming 10% of them experience abuse or neglect each year, we can calculate that less than one percent of all such cases are charged with a crime under § 22-46-2, and about 13% of those cases lead to a conviction. It should be noted that crimes committed under this statute may also qualify for other charges, such as assault or battery. This statistic may or may not include disabled persons as well, some of which may also be elderly.

The addition of emotional or psychological abuse to the physical abuse and neglect statute brings with it the possibility of a Class 1 misdemeanor, with a

maximum sentence of one year in county jail and a two-thousand dollar fine. The average Class 1 misdemeanor serves 10 days at a cost of \$105.40 per day. Under the definition provided by this bill, emotional or psychological abuse includes a sexual act or stimulation directed at and without the consent of an elder or adult with disability that involves nudity or is obscene, unreasonable confinement, harm or damage or destruction of property including pets, and ridiculing or demeaning conduct, derogatory remarks, verbal harassment, or threats to inflict physical or emotional abuse.

According to the National Elder Mistreatment Study cited by the National Center on Elder Abuse, emotional abuse is three times more likely to occur than physical abuse, and as likely to occur as neglect. Using the current rates of arrest and conviction for physical abuse and neglect, we can determine that roughly .0007% of abusers are arrested under § 22-46-2, and 13% of those are convicted and serve time in prison. Applying that statistic to the estimated 12,800 elderly or disabled adults that suffer abuse or neglect each year in South Dakota, we estimate that nine people would be arrested under this emotional or psychological abuse addition, with one person being convicted and serving on average 10 days in jail at \$105.40 cost per day. Therefore, the estimated yearly jail cost is \$1,054, with an impact of \$10,540 over ten years.

Approved: /S/ Jason Hancock                      Date: 1/25/16  
Director, Legislative Research Council

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