

**PRISON/JAIL POPULATION COST ESTIMATE STATEMENT**  
NINETY-SECOND SESSION  
LEGISLATIVE ASSEMBLY 2017

**SENATE BILL NO. 1760a**

---

**AN ACT TO ACCOMMODATE LEGISLATION RELATING TO THE PROTECTION OF  
THE PUBLIC SAFETY.**

A prison/jail population cost estimate statement has been requested on SB1760a due to allowing the Governor to create a public safety zone and creating additional trespass penalties for entering into a public safety zone after notice not to enter the zone.

A public safety zone would be declared under SB1760a if an event would consume significant public resources, pose a threat to public or private property, and pose a threat to the health and welfare of the public, while not amounting to a state of emergency or disaster. Entering into a public safety zone after a posted notice not to enter would be a Class 1 misdemeanor with a mandatory sentence of ten days in jail upon conviction. Additionally, if a person were to receive a second conviction for the same offense, had a prior conviction under the riot statutes in Chapter 22-10, or had a prior conviction in another state that would violated either of those sections in South Dakota, the defendant would be guilty of a Class 6 felony. South Dakota has not had an event recently that would have qualified for a declaration of a public safety zone, so in order to determine the potential impact that could be expected under SB 1760a the LRC looked to current violations of South Dakota trespass law and repeat offenders of laws that would count as a second violation under SB 1760a, and compared those numbers to the events of the Dakota Access Pipeline protests in North Dakota.

Over the last six years South Dakota has averaged 689 convictions a year of SDCL 22-35-6 (entering and refusing to leave property after notice). Currently, those convictions serve an average of 5.5 days in jail. Over the same time frame, 16.4% had a second conviction that would be considered a second offense under SB 1760a. Because a second offense under SB 1760a must be committed within the previous two years, the estimated percentage of re-offenders would be 5.4%.

As of January 31, 2017, there have been 595 arrests since the beginning of the Dakota Access Pipeline protests in North Dakota. This event would fit the definition of a public safety zone under SB 1760a and will be used as the likely

highest cost scenario for the potential costs the state could expect in the event of a declaration of a public safety zone.

If a public safety zone event resulted in 600 arrests 94.6%, or 568, could be expected to be in a violation of SDCL 22-35-6 with a mandatory minimum of ten days in jail. That would result in a jail cost of \$598,672. Under the current statute, the cost would be \$329,270, so the cost increase would be \$269,402. The remaining 5.4%, or 32, could result in a Class 6 felony conviction for a second offense within two years. The cost would depend on whether those individuals received a jail sentence or a prison sentence. If all the defendants received the average jail sentence of 74 days for a Class 6 felony, the cost would be \$249,587. However, if all the defendants were given the average prison sentence of 215 days for a Class 6 felony, the cost would be \$290,474. These costs would be reduced by the \$18,550 in jail costs that would already be incurred under the current law.

It is important to note that due to prosecutorial discretion, a person arrested for a violation of SB 1760a may not necessarily be charged and convicted of the same crime for which they were arrested. Due to the potential limited resources and space available, in the event of a mass number of arrests during the declaration of a public safety zone, it is likely that some individuals arrested for violation of SB 1760a may be pled down to a lesser offense and not serve jail time. However, due to the uncertain nature of that potential, the LRC is unable to speculate as to a percentage of plea deals that would result from SB 1760a charges.

The declaration of a public safety zone is likely to be a rare occurrence, and the prison or jail costs would be zero in most years. However, in the event of a declaration of a public safety zone, the state could expect to see a total impact on prison and jail costs of up to \$500,439 to \$541,326.

Approved: /s/ Jason Hancock Date: 2/21/17  
Director, Legislative Research Council