

PRISON/JAIL POPULATION COST ESTIMATE STATEMENT
NINETY-THIRD SESSION
LEGISLATIVE ASSEMBLY 2018

SENATE BILL NO. 65

AN ACT TO REVISE CERTAIN PROVISIONS REGARDING DRUG DELIVERIES THAT
RESULT IN DEATH AND TO PROVIDE A PENALTY THEREFOR.

A prison/jail population cost estimate statement is required for SB65 due to the enhancement of the principal felony by two class levels for intentional distribution of certain types of controlled or counterfeit substances, as prohibited in SDCL 22-42-2, where another person dies as a result of using that substance.

A violation of SB65 will vary based on the underlying felony in SDCL 22-42-2, unauthorized manufacture, distribution, counterfeiting or possession of Schedule I or II substances, which is either a Class 4 felony for distribution, a Class 3 felony if three or more items listed in section 1 are present, or a Class 2 felony if the substance is distributed to a minor. SB 65 enhances the existing felonies by two class levels, creating a Class 2 felony, a Class 1 felony, and a Class C felony.

In order to analyze how the new crime in section 1 would affect prison or jail populations, the Legislative Research Council utilized data from the South Dakota Department of Health on accidental overdose deaths. From 2013 to 2016 there was an average of 41.5 accidental overdose deaths per year, an estimated 15 of which were from illicit drugs. Due to varying factors including jurisdictional issues, and law enforcement and prosecutorial discretion, there is no way of knowing how many of these overdose deaths from illicit drugs will lead to arrests and convictions. The Legislative Research Council is assuming an average yearly rate of 5 convictions, or 50 convictions over a ten year period.

Currently, under SDCL 22-42-2, 96.4% of convictions are a Class 4 felony for distribution, 1.88% are a Class 3 felony for distribution if three or more items listed in section 1 are present, and 1.72% are a Class 2 felony if distributed to a minor. Over a ten year period, assuming 50 convictions, approximately 48 would be a Class 2 felony, 1 conviction a Class 1 felony, and 1 conviction a Class C felony.

Those convicted under the new crime would have had a Class 4 felony, a Class 3 felony, or a Class 2 felony under the existing statute. To determine the effect

on prison or jail populations, the Legislative Research Council looked at the cost difference between a Class 4 and a Class 2 felony, a Class 3 and a Class 1 felony, and a Class 2 and a Class C felony. Currently, persons convicted of nonviolent Class 1 or Class C felonies are eligible for parole after serving at least 35% of their sentence and Class 2 felonies are eligible after serving 30%, depending on criminal history. Due to the nature of parole, it is impossible for the Legislative Research Council to know when parole may be granted. Therefore, we will be working under the assumption that those convicted will be released at first eligibility to establish minimum standards.

The following table provides our analysis of the impact of SB65 on the number of days served in prison and jail:

	Current Average Sentence (Days)	Current Parole (Days)	SB 65 Average Sentence (Days)	SB 65 Parole (Days)	Increased Days
Distribution to Minor (prison)	1,886	566	8,589	3,006	2,440
Manufacture, distribution or possession w/3+ related criteria (prison)	2,309	547	7,257	2,540	1,993
Manufacture, distribution or possession (prison)	2,129	455	2,920	1,501	1,046
Manufacture/Distrib./Possession (jail/prison)	36		1,886	566	-36 jail/+566 prison

Given the impact of SB65 on the number of days those convicted will spend in prison or jail, and given the number of convictions for each type of crime, the following table is our estimate of the prison and jail costs associated with SB65:

	Distribution to Minor (Prison)		Manufacture, Distribution or Possession w/3+ Related Criteria (Prison)		Manufacture, Distribution or Possession (Prison)		Manufacture, Distribution or Possession (Jail)		TOTAL
	Convictions	Cost	Convictions	Cost	Convictions	Cost	Convictions	Cost	
Cost/day		\$74.83		\$74.83		\$74.83		\$89.73	
Year 1	0	\$0	0	\$0	5.6	\$0	0	(\$3,230)	(\$3,230)
Year 2	1	\$0	0	\$0	4.6	\$115,196	0	\$0	\$115,196
Year 3	0	\$12,294	0	\$0	4.6	\$247,578	0	\$0	\$259,872
Year 4	0	\$27,313	1	\$0	4.6	\$373,218	0	\$0	\$400,531
Year 5	0	\$27,313	0	\$13,664	4.6	\$363,086	0	\$0	\$404,063
Year 6	0	\$27,313	0	\$27,313	5.6	\$360,018	0	(\$3,230)	\$411,413
Year 7	0	\$27,313	0	\$27,313	4.6	\$380,588	0	\$0	\$435,214
Year 8	0	\$27,313	0	\$27,313	4.6	\$387,331	0	\$0	\$441,956
Year 9	0	\$27,313	0	\$27,313	4.6	\$387,331	0	\$0	\$441,956
Year 10	0	\$6,447	0	\$26,194	4.6	\$363,086	0	\$0	
10-year Total:		\$182,619		\$149,110		\$2,977,430		(\$6,461)	

In conclusion, the total average cost increases for prisons would be \$3,309,159 over a ten year period. The total average cost changes for jails would be a decrease of \$6,461 over a ten year period.

Approved: /s/ Jason Hancock Date: 2/5/18
 Director, Legislative Research Council