

PRISON/JAIL POPULATION COST ESTIMATE STATEMENT

Ninety-Fifth SESSION
2020 South Dakota Legislature

House Bill 1128

An Act to modify the penalty for causing a child to be present during methamphetamine use, distribution, or manufacture.

A prison/jail population cost estimate statement is required for HB1128 because the bill raises the penalty from a Class 1 misdemeanor to a Class 4 felony for exposing a minor under the age of fourteen to the use, distribution, or manufacture of methamphetamine. The penalty does not change for children 14 and above.

Since 2008, there have been no convictions under § 26-10-31.

Based on information collected from local law enforcement agencies, LRC estimates that children under the age of fourteen are present for 10% of current arrests for use, distribution, or manufacture of methamphetamine. LRC estimates that there are 3,140 convictions per year for possession or ingestion of a controlled substance. LRC estimates that 82% of these convictions are meth-related. Other meth-related convictions currently carry the same or a higher penalty and likely would not alter the charging and conviction practices under those statutes. Based on this data, LRC estimates that there are 258 convictions per year for possession or ingestion of meth where children under the age of 14 are present.

According to information received from state's attorneys, it is estimated that charging practices would be to charge an alleged offender with both crimes and plead down to the possession or ingestion charge with a Class 5 felony. In the rare cases that both charges are pursued and the alleged offender is convicted on both, the state's attorneys state they likely would pursue concurrent sentences. Therefore, the forecasted impact would be the increased prison time this specific group would serve. LRC estimates in 75% of the cases, the alleged offender would either plead to the Class 5 felony or only be convicted of the Class 5 felony.

Therefore, LRC estimates that 64 offenders per year would be convicted of the Class 4 felony and receive the longer concurrent sentence with their Class 5 felony conviction for possession or ingestion.

The average time served in prison for those sent to prison for Class 5 felonies is 266.1 days, to first release. The average time served in prison for those sent to prison for Class 4 felonies is 402.6 days, to first release. This results in an increased sentence of 136.5 days. Individuals serving time for these types of offenses are typically housed in minimum-security facilities, at a cost of \$44.86 per day. The annual operating cost for housing these additional prisoners, therefore, is \$391,896, or \$3,918,970 over 10 years.

In addition, incarcerating these individuals would require prison housing. While there is currently sufficient capacity in men's prison units to accommodate additional prisoners, women's prison units are currently at capacity. Of the 64 sent to prison on the longer

sentence, an estimated 16 would be women, approximately six of which would be in prison for the extra days at any given time of the year, resulting in six additional beds needing to be found out-of-state, possibly at a higher cost than South Dakota's \$44.86 per day, or construction of a new facility for female offenders.

This amounts to a total prison impact of \$391,896 in the first year, and \$3,918,970 over ten years. The impact to jail populations is expected to be zero.

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DATE: 2/20/2020
2020-FI1128
