

PRISON/JAIL POPULATION COST ESTIMATE STATEMENT

Ninety-Fifth SESSION
2020 South Dakota Legislature

House Bill 1195

An Act to provide an affirmative defense to pregnant women for certain controlled substance offenses.

A prison/jail population cost estimate statement is required for HB1195 because certain women convicted of a crime under this bill may be eligible for a Class 6 felony if they have been convicted three or more times of certain assault crimes.

The state of Tennessee is the only state currently to have enacted a variation of this statute. During a two-year period, Tennessee charged approximately 100 women for fetal assault. However, there is no available data on the number of convictions under their law.

In South Dakota, on average, 355 women per year are convicted of an assault charge that contributes to the enhanced sentence under § 22-18-1. Of those women, LRC estimates that 49 per year commit their second offense. Eight women per year commit their third offense and would already be convicted with this enhanced felony.

In South Dakota, approximately 1% of babies suffer from neonatal abstinence syndrome (NAS) or other symptoms of substance abuse dependence. Therefore, LRC estimates that the following:

Prior Convictions	Estimated Women Age 15-44	Fertility Rate per Year	Estimated Charges per year	Estimated Convictions per Year
No Convictions	180,000	13,752	8	2 (Misdemeanor)
1 Conviction	249	19	2	1 (Misdemeanor)
2 Convictions	41	3	0.03	0 (Felony)

Therefore, LRC estimates that this statute, if enacted, would result in 30 additional Class 1 misdemeanor convictions and one Class 6 felony over the next ten years

Assault convictions under § 22-18-1 are almost exclusively served in jails. The average time served in jail for those sent to jail for these types of Class 1 misdemeanors is 26 days, to first release. Individuals serving time for these types of offenses are typically housed in minimum security facilities, at a cost of \$90.26 per day. The annual operating cost for housing these additional prisoners, therefore, is \$7,040, or \$70,403 over 10 years.

Generally, felony assault convictions are served in the penitentiary. LRC estimates that there would be one felony conviction every ten years. Convictions under § 22-18-1 are not eligible for presumptive probation. The average time served in prison for those sent to prison for these types of Class 6 felonies is 501 days, to first release. Individuals serving time for these types of offenses are typically housed in minimum security facilities, at a cost of \$44.86 per day. The LRC estimates zero additional annual operating cost for housing this additional prisoner in the first year, and \$22,475 over 10 years.

The LRC estimates that no additional construction costs are necessary to meet the additional capacity required.

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