



## Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

# Fiscal Note

**Drafting Number:** LLS 22-0883 **Date:** April 8, 2022  
**Prime Sponsors:** Rep. Garnett; Lynch **Bill Status:** House Judiciary  
 Sen. Pettersen; Cooke **Fiscal Analyst:** Matt Bishop | 303-866-4796  
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**Bill Topic:** FENTANYL ACCOUNTABILITY AND PREVENTION

**Summary of Fiscal Impact:**

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

The bill creates programs for fentanyl use prevention, education, and treatment and updates fentanyl-related offenses. It increases state and local revenue and expenditures beginning in FY 2022-23, and creates one-time state transfers in FY 2022-23.

**Appropriation Summary:** For FY 2022-23, the bill requires appropriations of \$5,606,491 to various departments. It may require an appropriation to the Department of Corrections of \$2,428,938. See State Appropriations section for detail.

**Fiscal Note Status:** The fiscal note reflects the introduced bill.

**Table 1**  
**State Fiscal Impacts Under HB 22-1326**

		Budget Year FY 2022-23	Out Year FY 2023-24
<b>Revenue</b>		-	-
<b>Expenditures</b>	General Fund	-	\$0.4 million
	Cash Funds <sup>1</sup>	\$17.6 million	\$17.2 million
	Centrally Appropriated	\$0.1 million	\$0.1 million
	<b>Total Expenditures</b>	<b>\$17.7 million</b>	<b>\$17.7 million</b>
	<b>Total FTE</b>	<b>7.2 FTE</b>	<b>7.1 FTE</b>
<b>Transfers</b>	Behavioral and Mental Health Cash Fund	(\$26.0 million)	-
	Opiate Antagonist Bulk Purchase Fund	\$20.0 million	-
	Harm Reduction Grant Program Cash Fund	\$6.0 million	-
	<b>Net Transfer</b>	<b>\$0</b>	-
<b>Other Budget Impacts</b>	General Fund Reserve	\$364,341	-

<sup>1</sup> Money in the Behavioral and Mental Health Cash Fund comes from federal ARPA funds. These amounts do not include the expenditure of transferred funds.

## **Summary of Legislation**

The bill modifies fentanyl-related criminal offenses, updates practices around dispensing opiate antagonists, creates an education campaign, broadens the scope of the Harm Reduction Grant Program, and makes requirements for continuity of care for individuals in the criminal justice system with substance use disorder. These provisions are described in more detail below.

**Fentanyl-related offenses.** The bill updates existing fentanyl-related offenses by specifying the amounts of any substance containing any amount of fentanyl, carfentanyl, or an analog thereof that are unlawful to possess, distribute, manufacture, sell, or possess. Lower level offenses escalate to a level 1 drug felony if a person dies as a proximate cause of using the fentanyl, the drug originated outside Colorado, or the offender also possesses pill or tablet manufacturing equipment.

Current law grants immunity for certain individuals who report an emergency drug overdose. The bill extends this exemption to individuals whose provision of fentanyl is a proximate cause for death. For three years, beginning July 1, 2022, law enforcement agencies and district attorney offices must report on these instances.

Any person convicted for a fentanyl-related offense must undergo a substance abuse assessment, which may require community-based treatment, residential treatment, or non-residential treatment, and the completion of a fentanyl education program developed by the Department of Human Services (CDHS). Individuals represented by court-appointed counsel are not required to pay the costs of a treatment program ordered as a condition of probation or the education requirement.

**Disbursement of opiate antagonists.** Current law specifies the individuals to whom a prescriber may prescribe or dispense an opiate antagonist, and additional individuals or entities who may possess, furnish, or administer an opiate antagonist. The bill consolidates these lists and broadens the types of individuals who may be prescribed or dispensed opiate antagonists, may furnish opiate antagonists to others, are encouraged to educate employees and volunteers on the use of an opiate antagonist, and are immune from civil damages when administering an opiate antagonist in good faith.

The bill transfers \$20 million to the Opiate Antagonist Bulk Purchase Fund, which is continuously appropriated to the Department of Public Health and Environment (CDPHE) for the bulk purchase and distribution of opiate antagonists. The bill also appropriates \$300,000 to CDPHE for the purchase and distribution of non-laboratory synthetic opiate detection tests in FY 2022-23.

**Education, trainings, and grants.** CDPHE must develop, implement, and maintain an ongoing, statewide fentanyl prevention and education campaign to inform the public about its dangers, prevention, treatment, and laws. The department must also conduct at least five regional training sessions during FY 2022-23 for community partners to implement youth health development strategies, and it must maintain a website of educational materials.

The bill modifies the Harm Reduction Grant Program in CDPHE to broaden the list of entities eligible for grants, broaden the program's scope, and it transfers \$6 million for the program.

**Continuity of care.** Current law encourages correctional facilities to maintain the treatment of an incarcerated person's opioid use disorder. The bill requires such treatment, and requires the correctional facility to provide opiate antagonists and a referral to a treatment provider to the person upon release from the facility.

The bill also extends the requirement to provide opiate antagonists and a referral to county jails. County jails must develop protocols for medication-assisted treatment or other withdrawal management care by January 1, 2023; the bill transfers \$3 million to CDHS to assist county jails with these requirements.

Starting January 1, 2023, community corrections programs in the Department of Public Safety must assess participants for substance use withdrawal symptoms and to develop protocols for withdrawal management care. The bill expands the authority of the Correctional Treatment Board to address drug overdose prevention.

## Assumptions

The bill requires specific appropriations from the Behavioral and Mental Health Cash Fund to cover many of the bill's costs. The fiscal note assumes that additional costs to implement the bill above these amounts are also paid from that fund through FY 2023-24. In future years, General Fund will be required to cover any ongoing expenses. The General Assembly may also choose to appropriate General Fund for these additional expenses, and the fiscal note will be updated to reflect the actual fund source used.

## Comparable Crime Analysis

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or creates a new factual basis for an existing crime. The following sections outline data on crimes that are comparable to the offense in this bill and discuss assumptions on future rates of criminal convictions resulting from the bill.

**Prior conviction data.** The bill changes the classification of several existing crimes, as discussed below.

**Possession.** The bill makes the unlawful possession of any material, compound, mixture, or preparation that weighs over 4 grams and contains any amount of fentanyl, carfentanil, or an analog thereof a level 4 drug felony. From FY 2018-19 to FY 2020-21, 10,946 individuals have been convicted and sentenced for the offense of possession of a schedule I or II controlled substance. Of the persons convicted, 7,469 were male, 3,473 were female, and 7 did not have a gender identified. Demographically, 9,099 were White, 1,017 were Black/African American, 617 were Hispanic, 80 were Asian, 64 were American Indian, 69 were classified as "Other," and 3 did not have a race identified.

**Distribution.** Under current law, unlawful distribution of controlled substances are sentenced as follows: 250 grams or more is a level 1 drug felony; 14 grams to 250 grams is a level 2 drug felony; and 0 grams to 14 grams is a level 3 drug felony. Under the bill, unlawful distribution (as well as manufacturing, dispensing, or sale of a material, compound, mixture, or preparation containing fentanyl, carfentanyl, or an analog thereof) is:

- a level 1 drug felony if it weighs more than 50 grams;
- a level 2 drug felony if it weighs more than 4 grams, but not more than 50 grams; and
- a level 3 drug felony if it weighs not more than 4 grams.

From FY 2018-19 to FY 2020-21, 2,452 individuals have been convicted and sentenced for the offenses of distribution of controlled substances. Of the persons convicted, 1,943 were male, 507 were female, and 2 did not have a gender identified. Demographically, 1,779 were White, 412 were Black/African American, 206 were Hispanic, 24 were Asian, 9 were American Indian, 15 were classified as "Other," and 7 did not have a race identified.

**Assumptions.** While the number of individuals convicted of possession offenses under current law is substantial, because fentanyl is already a controlled substance and because many of the new offenses that may be charged under the bill will correspond with other existing drug felony charges, the fiscal note assumes that the bill will result in minimal additional possession case filings.

For distribution offenses, this analysis assumes that 5 percent of level 3 drug felony convictions will escalate to level 2 drug felonies under the bill, resulting in a net increase of about 32 offenders per year convicted and sentenced to custody in the Department of Corrections (DOC). The average DOC length of stay for a level 2 drug felony is 26.5 months with an average parole of 14.3 months, increased from the level 3 drug felony average length of stay of 16.8 months and average parole of 9.3 months

Visit [leg.colorado.gov/fiscalnotes](http://leg.colorado.gov/fiscalnotes) for more information about criminal justice costs in fiscal notes.

## State Revenue

**Criminal fines and court fees.** By modifying existing drug felony offenses, the bill will increase state revenue from criminal fines and court fees by an indeterminate amount beginning in FY 2022-23, credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. The fine penalty is \$1,000 to \$100,000 for a level 4 drug felony, up to \$5,000 to \$1,000,000 for a level 1 drug felony is. Additionally, court fees may be imposed on a case-by-case basis for a variety of court-related costs, such as probation supervision, drug surcharges, or late fees. Because the courts have the discretion of incarceration, imposing a fine, or both, a precise state revenue impact cannot be determined. Criminal fine and court fee revenue is subject to TABOR.

**State Transfers**

For FY 2022-23, the bill requires the following transfers from the Behavioral and Mental Health Cash Fund:

- \$20.0 million to the Opiate Antagonist Bulk Purchase Fund; and
- \$6.0 million to the Harm Reduction Grant Program Cash Fund.

**State Expenditures**

The bill increases state expenditures in multiple departments by \$17.7 million beginning in FY 2022-23 from the various cash funds. Expenditures are shown in Table 2. It may also increase workload and costs for the Judicial Department related to the enhanced criminal penalties under the bill. These impacts are described below.

**Table 2  
 Expenditures Under HB 22-1326**

<b>Cost Components</b>	<b>FY 2022-23</b>	<b>FY 2023-24</b>
<b>Department of Public Health and Environment</b>		
Personal Services	\$383,217	\$375,860
Operating Expenses	\$7,020	\$6,885
Capital Outlay Costs	\$31,000	-
Opiate Antagonists Bulk Purchase	\$9,065,195	\$9,065,195
Harm Reduction Grants	\$2,588,964	\$2,588,964
Education Campaign	\$925,490	\$925,490
Fentanyl Tests	\$300,000	-
Regional Trainings	\$50,000	-
Website Development	\$30,000	\$5,000
Centrally Appropriated Costs <sup>1</sup>	\$96,087	\$96,348
FTE – Personal Services	5.2 FTE	5.1 FTE
<b>CDPHE Subtotal</b>	<b>\$13,476,972</b>	<b>\$13,063,742</b>

**Table 2  
 Expenditures Under HB 22-1326 (Cont.)**

<b>Department of Human Services</b>		
Personal Services	\$184,118	\$184,118
Operating Expenses	\$2,700	\$2,700
Capital Outlay Costs	\$12,400	-
County Jails Support	\$3,000,000	-
MSO Regional Evaluation	\$700,000	-
Fentanyl Education Program	\$150,000	\$25,000
Centrally Appropriated Costs <sup>1</sup>	\$36,562	\$36,562
FTE – Personal Services	2.0 FTE	2.0 FTE
<b>CDHS Subtotal</b>	<b>\$4,085,780</b>	<b>\$248,380</b>
<b>Judicial Department</b>		
Treatment Costs	\$178,154	\$178,154
<b>Judicial Subtotal</b>	<b>\$178,154</b>	<b>\$178,154</b>
<b>Department of Corrections</b>		
Prison Operating Expenditures	-	\$470,573
Parole Operating Expenditures	-	(\$120,063)
<b>DOC Subtotal</b>	<b>-</b>	<b>\$350,510</b>
<b>Total</b>	<b>\$17,740,906</b>	<b>\$17,678,186</b>
<b>Total FTE</b>	<b>7.2 FTE</b>	<b>7.1 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Department of Public Health and Environment.** Costs will increase to for a variety of activities, as described below. Standard operating and capital outlay costs are included for all new personnel.

- *Opiate Antagonists Bulk Purchase, Harm Reduction Grants, and Fentanyl tests.* The bill requires appropriations to increase the opiate antagonist bulk purchase program, the Harm Reduction Grant Program, and to procure non-laboratory synthetic opiate detection tests. The estimates in Table 2 are for illustrative purposes only; actual costs will be based on demand for these services, available fund balance, and decisions made by the department. The growth of the bulk purchase program requires 2.1 FTE to update policies, evaluate additional orders, conduct outreach, and report on the program. The growth of the Harm Reduction Grant Program requires 2.2 FTE to update policies, evaluate grant applications, monitor grant awards, and compile reports.
- *Education campaign.* Based on other educational and public awareness campaigns operated by the department, the fentanyl campaign is estimated to cost \$1.0 million per year for three years. This includes working with a media agency and pursuing a variety of media outlets including television and web-based outreach. Costs also include 0.8 FTE to manage the agency contract, approve plans, and facilitate reporting.

- *Regional trainings.* Costs for the regional trainings include facility rental, developing training materials, and providing travel stipends to community partners. The trainings require 0.1 FTE in FY 2022-23 only.
- *Website development.* Workload will increase to develop, implement, and maintain a website to serve as the state resource for the most accurate and timely information regarding fentanyl.

**Department of Human Services.** Workload will increase to approve residential treatment facilities, ensure that individuals transition into treatment facilities, and report on the programs, which requires 2.0 FTE beginning in FY 2022-23. Standard operating and capital outlay costs are included.

- *County jail support.* The bill requires \$3.0 million to support county jails in developing protocols for medication-assisted treatment and other appropriate withdrawal management care.
- *MSO Regional Evaluation.* The bill requires managed service organizations (MSOs) to evaluate the existing supply and demand for medication-assisted treatment, other withdrawal management treatments, and the provision of recovery services. The department will contract for the evaluation at a cost of \$100,000 for each of the seven MSO regions in FY 2022-23.
- *Fentanyl education program.* Expenditures will increase to hire a contractor to develop the fentanyl education program for individuals receiving treatment in a residential or community-based treatment facility. The program will be developed by January 1, 2023, and updated annually.

**Judicial Department.** Standard operating and capital outlay costs are included.

- *Probation.* The bill requires residential or community-based treatment for certain individuals as a condition of parole, and specifies that an individual with court-ordered representation is not responsible for the costs. The fiscal note estimates that approximately 23 individuals may be required to undertake such treatment with costs covered by the state. This is estimated to cost \$178,154 per year.
- *Trial courts.* This bill may increase workload and costs for the trial courts in the Judicial Department to process additional criminal case filings. To the extent that offenders are sentenced to probation, workload and costs in the Division of Probation will increase. Workload and costs may increase in the agencies that provide representation to indigent persons, including the Office of the State Public Defender and the Office of Alternate Defense Counsel. Overall, it is assumed these impacts can be accomplished within existing appropriations. Should a change in funding be required for any agency or division with the Judicial Department, the fiscal note assumes it will be addressed through the annual budget process.

Workload will also increase in trial courts for annual reporting to the legislature and to process drug evaluations for fentanyl offenders. This can be accomplished within existing appropriations.

**Department of Corrections prison and parole costs (five-year fiscal impact).** Based on the assumptions provided in the Comparable Crime Analysis section, this bill increases prison operating costs for DOC by a total of \$2.4 million over the five-year period beginning in FY 2022-23, which are paid from the General Fund. The fiscal note assumes no prison operating impacts will occur in the first year due to the amount of time required for criminal filing, trial, disposition and sentencing of each case. Once an offender is released from prison, they are assigned to parole; the parole impact is assumed to first occur in FY 2024-25. Table 3 shows the estimated cost of the bill over the next five fiscal years.

**Table 3  
 Prison and Parole Operating Costs Under HB 22-1326**

<b>Fiscal Year</b>	<b>Prison ADP Impact</b>	<b>Prison Cost</b>	<b>Parole ADP Impact</b>	<b>Parole Cost</b>	<b>Total Costs</b>
FY 2022-23	-	-	-	-	\$0
FY 2023-24	19.1	\$470,573	(19.1)	(\$120,063)	\$350,510
FY 2024-25	25.9	\$635,732	0.5	\$3,010	\$638,742
FY 2025-26	25.9	\$635,732	13.4	\$84,111	\$719,843
FY 2026-27	25.9	\$635,732	13.4	\$84,111	\$719,843
			<b>Total</b>	<b>\$2,428,938</b>	

**Department of Corrections capital construction costs.** In addition to the five-year operating and parole impacts discussed above, Section 2-2-703, C.R.S., requires that the General Assembly consider increased capital construction costs for DOC to house additional inmates. Based on the average per-bed construction costs of previous prison facilities, capital construction costs of \$4,640,246 would be required to increase prison bed space in line with the estimated increase in prison population under this bill. If the General Assembly determines that additional prison bed space is needed, this bill should include a transfer of General Fund to the Capital Construction Fund, to be reappropriated to the Corrections Expansion Reserve Fund. Money in the Corrections Expansion Reserve Fund is available for future DOC construction projects, which would be identified and funded through the annual budget process based on the state's overall prison needs.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

**Local Government**

Beginning in FY 2022-23, this bill is expected to increase local government workload and costs, as described below. The exact impact to a particular local government will vary depending on the number of offenses committed within its jurisdiction.



**District attorneys.** The bill increases workload and costs for district attorneys to prosecute new drug felony offenses. Workload will also increase to report on drug or alcohol overdose investigations provided by law enforcement agencies. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

**Law enforcement agencies.** Workload will increase for law enforcement agencies to report on whether arrests are made, or not made pursuant to statutory immunity, as a result of the investigation of an emergency drug or alcohol overdose.

**County jails.** Workload will increase in county jails to develop protocols for medication-assisted treatment or other withdrawal management care, and to provide opiate antagonists to certain individuals upon release from custody. These costs will be offset, at least partially, by funding made available in this bill. Once state funding expires, counties will be responsible for the full costs of these services.

## Effective Date

The bill takes effect January 1, 2023, except that the sections pertaining to fentanyl-related offenses, opiate antagonists, synthetic opiate detection tests, the education campaign, and the Harm Reduction Grant Program take effect July 1, 2022. The bill applies to offenses committed on or after July 1, 2022. The bill includes various conditional provisions to account for whether or not House Bill 22-1278 creating the Behavioral Health Administration takes effect, which do not substantively affect the provisions or effective dates in this bill.

## State Appropriations

For FY 2022-23, the bill requires the following appropriations from the Behavioral and Mental Health Cash Fund:

- \$1,379,119 to the Department of Public Health and Environment, and 4.9 FTE;
- \$4,049,218 to the Department of Human Services, and 2.0 FTE; and
- \$178,154 to the Judicial Department.

This bill may require a General Fund appropriation in FY 2022-23 of \$2,428,938 for the five-year DOC operating impacts identified in Table 3 if House Bill 22-1330 is not enacted. The General Assembly may also appropriate \$4,640,246 for prison bed construction, as necessary.

The remaining expenditures are paid from continuously appropriated cash funds.

**State and Local Government Contacts**

Corrections  
District Attorneys  
Information Technology  
Law  
Public Safety

Counties  
Human Services  
Judicial  
Public Health and Environment  
Regulatory Agencies