



**Colorado
Legislative
Council
Staff**

HB16-1344

**FINAL
FISCAL NOTE**

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 16-0253
Prime Sponsor(s): Rep. Foote
Sen. Cooke

Date: June 27, 2016
Bill Status: Postponed Indefinitely
Fiscal Analyst: Amanda Hayden (303-866-4918)

BILL TOPIC: SPECIAL OFFENDER WHEN DEATH RESULTS AFTER USE

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018	FY 2021-2022
State Revenue	<\$5,000	<\$5,000	<\$5,000
Cash Funds	<5,000	<5,000	<5,000
State Expenditures			\$22,620
General Fund			22,620
TABOR Impact		<\$5,000	<\$5,000
Appropriation Required: \$22,620 - Department of Corrections (FY 2021-22).			
Future Year Impacts: Increase in state revenue and expenditures in out years.			

NOTE: This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Summary of Legislation

This bill allows the state to charge an individual as a special offender if he or she manufactures, distributes, dispenses, or sells a controlled substance that another person dies from using. The bill exempts offenders who distribute or transfer small amounts of certain controlled substances for the purpose of consuming them with another person at the time of sale. Any drug crime with special offender status is a level 1 drug felony.

Background

The manufacture, distribution, or sale of a controlled substance carries a penalty classification ranging from a level 1 drug misdemeanor to a level 1 drug felony, depending on the circumstances. Manslaughter or criminally negligent homicide (crimes the state may currently charge if it can connect an overdose death with the person manufacturing, distributing, or selling a controlled substance) are class 4 and class 5 felonies, respectively.

Based on data from the Judicial Department for FY 2014-15, there were 796 convictions under Section 18-18-405, C.R.S., unlawful distribution, manufacture, dispensation, or sale of a controlled substance. About 45 percent of these cases (357 cases) resulted in prison sentences, and of these:

- 28 were sentenced as level 1 drug felonies;
- 121 were sentenced as level 2 drug felonies;
- 154 were sentenced as level 3 drug felonies;
- 50 were sentenced as level 4 drug felonies; and
- 2 each were sentenced as class 3 or 4 felonies.

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., 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 changes an element of the existing crime that creates a new factual basis for the offense.

In FY 2014-15, the state charged only one individual with the overdose death of another person in conjunction with a level 2 drug felony charge of unlawful manufacture, distribution, or sale of a controlled substance. The individual, a Caucasian female, was charged with both manslaughter and criminally negligent homicide. The case has not yet gone to trial.

Assumptions

The fiscal note assumes that at least one individual per year will be convicted as a special offender as defined by the bill. The bill requires the state to prove that a death resulted from the use of a controlled substance manufactured, distributed, or sold by an individual in order to charge that individual as a special offender. Given the difficulty of proving a direct connection, this analysis assumes that the number of individuals charged as a special offender will be very low. An estimate of at least one individual charged and convicted per year does reflect, however, the lower burden of proof required under the bill than for a conviction of criminally negligent homicide or manslaughter.

In estimating the impact to the Department of Corrections (DOC) of one offender per year convicted under the bill, the fiscal note assumes that under current law there is one individual convicted per year of a level 3 felony drug charge in conjunction with criminally negligent homicide. Although there is one case from FY 2014-15 in which an individual was charged with criminally negligent homicide *and* manslaughter in connection with the overdose death of another person, the lack of sentencing data for this case makes it a less useful point of comparison. Furthermore, the range of possible offenses under Section 18-18-405, C.R.S., makes the potential impact of the bill difficult to estimate. This analysis uses the sentence for a level 3 drug felony charge because more individuals convicted under current law in FY 2014-15 were sentenced as level 3 drug felons than any other classification.

State Revenue

Beginning in FY 2016-17, this bill is anticipated to increase state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a level 1 drug felony is \$5,000 to \$1 million. Because the courts have the discretion of imposing a fine, the impact to state revenue is expected to be minimal. Based on the low number of fines imposed in 2015, this analysis assumes that any revenue generated is likely to be less than \$5,000.

TABOR Impact

This bill may increase state cash fund revenue from fines, which may increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund. No TABOR impact is expected in FY 2016-17.

State Expenditures

Beginning in FY 2016-17, this bill may increase workload in the Judicial Department by increasing trial and hearing times. Based on the low number of persons assumed in this analysis to be charged with the new special offender status as a result of this bill, it is assumed that courts can accommodate the increased workload within existing appropriations.

Office of the State Public Defender and Office of the Alternate Defense Counsel. The bill may also increase workload or costs for the Office of the State Public Defender and Office of the Alternate Defense Counsel to provide representation for any persons deemed indigent. The fiscal note assumes any such increases are minimal and will not require an increase in appropriations.

Department of Corrections (DOC). The fiscal note estimates increasing future costs to DOC. Offenders sentenced to prison for criminally negligent homicide as a result of the sale of a controlled substance have an average length of stay of approximately 59.7 months. Because this analysis assumes individuals sentenced under the bill will spend an average of 100.7 months in prison, no impact to DOC occurs until the fifth year after the effective date of this bill. The estimated fiscal impact in FY 2021-22 is \$22,620 and using the assumptions in this analysis, each new offender sentenced under the bill represents a \$74,700 increase in state expenditures to DOC (based on the 41-month difference in the average lengths of stay for current and proposed sentencing, multiplied by the current daily rate of \$59.90).

Local Government Impact

The bill may increase expenditures for local governments by increasing the workload of district attorneys to prosecute more complicated cases. Based on the low number of persons assumed to be charged under the new special offender status as a result of this bill, the fiscal note assumes that any workload increase to district attorneys' offices will be minimal.

Effective Date

The bill was postponed indefinitely by the House Judiciary Committee on April 19, 2016.

State and Local Government Contacts

Corrections

District Attorneys

Judicial