



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

Drafting Number: LLS 19-0881	Date: April 2, 2019
Prime Sponsors: Rep. Herod; Sandridge Sen. Marble; Lee	Bill Status: House Judiciary
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Bill Topic: OFFENSE LEVEL FOR CONTROLLED SUBSTANCE POSSESSION

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill reclassifies several existing drug felonies as drug misdemeanors, reduces the fine penalties and jail terms for drug misdemeanors, and makes several other changes to sentencing for drug offenses. It also creates a grant program to fund drug courts. On an ongoing basis, the bill is expected to decrease state prison costs, and increase state probation supervision and county jail costs.

Appropriation Summary: For FY 2019-20, this bill requires net appropriations of \$53,630 to the Judicial Department. It also requires a reduction in appropriations to the Department of Corrections of \$13.7 million for the five-year starting in FY 2019-20.

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

**Table 1
State Fiscal Impacts Under HB 19-1263**

		FY 2019-20	FY 2020-21	FY 2021-22
Revenue	Cash Funds	-	\$99,600	\$99,600
	Total	-	\$99,600	\$99,600
Expenditures	General Fund	\$53,630	(\$891,237)	(\$3,050,065)
	Centrally Appropriated	(\$54,601)	\$113,331	\$113,331
	Total	(\$1,971)	(\$777,906)	(\$2,936,734)
	Total FTE	(7.6 FTE)	5.1 FTE	5.1 FTE
Transfers		-	-	-
TABOR Refund		-	-	-

Summary of Legislation

This bill changes the classification and sentencing of various drug-related offenses as follows:

- possession of any quantity of cathinones or a schedule I, II, III, IV, or V controlled substance is changed from a level 4 drug felony to a level 1 drug misdemeanor;
- possession of more than 12 ounces of marijuana or more than 3 ounces of marijuana concentrate is changed from a level 4 drug felony to a level 1 drug misdemeanor;
- possession of less than 3 ounces of marijuana concentrate is changed from a level 1 drug misdemeanor to a level 2 drug misdemeanor.

Sentencing for level 1 drug misdemeanors. Under current law, a person sentenced to a level 1 drug misdemeanor may be sentenced to between 6 and 18 months of imprisonment in a county jail, and be fined between \$500 and \$5,000. Under the bill, offenders convicted of a level 1 drug misdemeanor for possession of a controlled substance or specified amounts of marijuana must be sentenced to up to two years of probation, and may be sentenced to up to 180 days in county jail during the term of probation, either as a condition of, or from a violation of, probation. The fine penalty for these offenses under the bill may not exceed \$1,000.

Sentencing for level 2 drug misdemeanors. Under current law, a person sentenced to a level 2 drug misdemeanor may be sentenced up to 12 months of imprisonment in a county jail, and be fined between \$50 and \$750. Under the bill, offenders convicted of a level 2 drug misdemeanor for use of a controlled substance, possession of specified amount of marijuana, possession of synthetic cannabinoids, and abuse of toxic vapors must be sentenced to up to one year of probation, and may be sentenced to up to 120 days in county jail during the term of probation, either as a condition of, or from a violation of, probation. The fine penalty for these offenses under the bill may not exceed \$500.

Failure to appear. Additionally, this bill allows the court to enter a bench warrant for the failure to honor a written promise to appear in court on a drug charge and eliminates the class 3 misdemeanor charge for failure to appear.

Minuscule drug amounts. District attorneys are not allowed to charge or prosecute a person for any minuscule, residual, or unusable amount of a controlled substance found in a syringe or in any other drug paraphernalia.

Useful service. Currently law requires drug offenders to be sentenced to complete useful public service unless he or she is sentenced to the Department of Corrections (DOC) or community corrections. This bill allows the court to suspend a sentence of useful public services if it interferes with treatment or other probation requirements. Useful public services is removed as a requirement for diversion or a deferred sentence.

Toxic vapor sentencing. Under current law, an offender convicted of a second or subsequent offense for abusing toxic vapors may be sentenced to county jail. This bill removes jail as a sentencing option for this level 2 drug misdemeanor, regardless of prior convictions.

Grant program. This bill creates the County Court Drug Court Grant Program in the Judicial Department. This grant program is to provide funds to an eligible city and county to operate an evidence-based misdemeanor drug court in its county court.

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 changes an element of an existing crime. The following sections outline data on existing offenses that are reclassified in this bill and discuss assumptions on future rates of criminal convictions and sentencing under the bill.

Prior conviction data. This bill reclassifies the various drug offenses listed below. For these offenses, 4,600 individuals were convicted and sentenced in 2018, including:

- 4,500 for possession of a schedule I or II controlled substance; and
- 100 for possession of more than 12 ounces of marijuana or more than 3 ounces of marijuana concentrate.

Of the persons convicted and sentenced above, 3,105 were male, 1,493 were female, and 2 did not have a gender identified. Demographically, 3,840 are White, 395 were Black/African American, 294 were Hispanic, 35 were Asian, 12 were American Indian, and 24 were classified as "Other".

In addition, the bill removes the possibility of incarceration for persons convicted of abusing toxic vapors. In 2018, 59 people were convicted and sentenced for this offense, of which 1 person was sentenced to DOC and 2 persons were sentenced to county jail for a second or subsequent offense.

This bill also reclassifies the possession of cathinones for schedule III, IV, or V controlled substances. In 2018, 6,212 people were convicted and sentenced for possession of a schedule III, IV, or V controlled substance. Of the 6,212 persons convicted for a schedule III, IV, or V controlled substance, only a portion of these were for the possession of cathinones. What specific controlled substance a person had possession of is not available, therefore it is unknown how many occurrences would now be reduced to a level 1 drug misdemeanor.

Assumptions. This analysis assumes that the number of criminal case filings per year for the offenses under the bill will continue at a similar rate as in recent years or be minimally reduced. From these filings, it is assumed that 193 fewer offenders per year will be convicted and sentenced to the DOC. Instead, these offenders are assumed to be sentenced to county jail or probation. The average Department of Corrections (DOC) length of stay for a class 4 drug felony is 4.8 months with an average parole length of stay of 9.6 months once he or she is released from prison. In addition, it is estimated that a total of 166 offenders currently being sentenced to community corrections would instead be sentenced to probation. The fiscal note is also based on the following assumptions:

- due to the amount of time between arrest and sentencing, these sentencing changes will not begin until FY 2020-21 and, given the January 1, 2020 effective date, FY 2020-21 sentences are prorated by 6 months.
- probation impacts are expected to begin in FY 2020-21 and are full-year impacts given the duration of cases in county court.

Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Revenue

This bill will increase state revenue by up to \$99,600 from probation fees starting in FY 2020-21. This increase is offset by a reduction in other criminal fine and court fee revenue. These revenue impacts are discussed below.

Probation fees. Offenders on probation pay a \$50 per month probation supervision fee. Based on the assumed number of offenders sentenced to probation, rather than a term of incarceration in the DOC or county jail, or community corrections, the bill increases cash fund revenue by \$99,600 to the Judicial Department.

Criminal fines and court fees. By reclassifying existing drug felonies as drug misdemeanors, and reducing the potential fine penalty for drug misdemeanors, the bill will decrease state revenue from criminal fines and court fees by a minimal amount beginning in FY 2019-20, credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. The fine penalty for a level 4 drug felony is between \$1,000 and \$100,000, and the fine penalty for a level 1 drug misdemeanor under the bill may be up to \$1,000. The bill also reduces potential fine revenue from level 2 drug misdemeanors, which may not exceed \$500 under the bill. Because courts have the discretion of incarceration, imposing a fine, or both, a precise state revenue impact cannot be determined. Additionally, court fees may be imposed on a case-by-case basis for a variety of other court-related costs, such as drug surcharges and late fees, which may also be affected by the change in fine revenue. Criminal fine and court fee revenue is subject to TABOR.

State Expenditures

Overall, the bill decreases state expenditures by \$1,971 in FY 2019-20, \$777,906 in FY 2020-21, and \$2,936,734 in FY 2021-22. These savings are incurred after accounting for a net increase in costs to the Judicial Department and savings to the DOC for prison and parole operating expenses. Judicial costs, which include savings for the trial courts, an increase in costs to the Division of Probation, and an increase in costs from the new grant program, are shown in Table 2. DOC savings, which total up to \$13.7 million over the five-year period starting in FY 2019-20, are shown in Table 3. These impacts are further discussed below.

Judicial Department. The bill increases costs in the Judicial Department from increased use of probation and creation of the new grant program, and decreases workload and costs for the trial courts and agencies providing indigent representation.

Probation supervision. The bill increases costs for the Division of Probation in the Judicial Department by \$1,131,619 and 12.6 FTE in FY 2020-21 and future years. This is for probation FTE and associated operating costs to supervise additional offenders, based on judicial protection workload standards.

Grant program. The bill creates a new grant program to support cities and counties that do not receive funding for the operation of its county court, as this bill shifts cases from district court to county court. Currently, the Denver County Court is the only city and county eligible for this grant program, as all other county courts are funded by the state. The grant amount may cover all or a portion of costs incurred. Based on the estimated savings in district court, the fiscal note assumes that the grant amount may cost up to \$700,000 annually, which would result in increased state expenditures of up to \$350,000 in FY 2019-20 and up to \$700,000 in FY 2020-21. The workload to establish and administer the grant program is assumed to be minimal.

Trial courts. This bill will decrease costs and workload for the trial courts in the Judicial Department in several ways. First, drug misdemeanor trials are take less time than drug felony trials. Second, the bill prohibits district attorneys from prosecuting cases involving residual amounts of drugs, which will also potentially decrease come case filing or the complexity of certain cases. Third, by reclassifying felony drug offenses as drug misdemeanor, the bill shifts workload from district court to county court. This will reduce state expenditures and workload, as cases that would previously be heard in Denver District Court will now be heard in Denver County Court, which is funded by the city and county of Denver, rather than the state court system. This is estimated to result a reduction of 1.9 FTE for magistrates and 5.6 FTE for support staff, which will reduce expenditures by \$369,226 and 3.2 FTE in FY 2019-20 based on trial court workload for 6 months, and \$841,837 and 7.5 FTE in FY 2020-21 and future years.

Indigent representation. Costs and workload may also decrease in the agencies that provide representation to indigent persons, including the Office of the State Public Defender and the Office of Alternate Defense Council. Overall, it is assumed that these reductions do not require a change in appropriations.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill, such as employee insurance and supplemental employee retirement payments, are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. On net, this bill reduces centrally appropriated costs in FY 2019-20 by \$54,601 and increases these costs by \$113,331 in FY 2020-21 and FY 2021-22.

**Table 2
 Expenditures Under HB 19-1263**

	FY 2019-20	FY 2020-21	FY 2021-22
Judicial Department			
Personal Services - Trial Courts	(\$281,551)	(\$657,939)	(\$657,939)
Personal Services - Probation	-	\$867,934	\$867,934
Operating Expenses and Capital Outlay Costs	(\$15,819)	\$966	\$966
Grant Program	\$350,000	\$700,000	\$700,000
Centrally Appropriated Costs*	(\$54,601)	\$113,331	\$113,331
FTE – Trial Courts	(3.2 FTE)	(7.5 FTE)	(7.5 FTE)
FTE – Probation	-	12.6 FTE	12.6 FTE
Judicial Subtotal	(\$1,971)	\$1,024,292	\$1,024,292
Department of Corrections			
Operating Expenses	-	up to (\$1,802,198)	up to (\$3,961,026)
DOC Subtotal	-	(\$1,802,198)	(\$3,961,026)
Total Cost	(\$1,971)	(\$777,906)	(\$2,936,734)
Total FTE	(3.2 FTE)	5.1 FTE	5.1 FTE

* Centrally appropriated costs are not included in the bill's appropriation.

Department of Corrections - Five-year fiscal impact. Based on the assumptions provided in the Comparable Crime Analysis section, this bill decreases prison operating and parole costs for the DOC by a total of up to \$13,685,276 over the five-year period beginning in FY2019-20. The fiscal note assumes no prison impact will occur in the first year and that given the January 1, 2020 start date, impacts in FY 2021-22 will only be for 6 months. Once an offender is released from prison, he or she is assigned to parole; the estimated reduction in parole costs is shown as beginning once the initial cohort of offenders who avoid incarceration under the reclassified offenses begin to receive sentences other than incarceration in the DOC. Table 3 shows the estimated cost of the bill over the next five fiscal years. Future bed impacts are reduced by up to 77 per year, which may reduce future capital construction cost impacts. For information purposes, capital construction costs of \$178,471 are assumed for each additional one prison bed occupied as a result of legislation that create new crimes or reclassify existing crimes. It is assumed that these impacts will be addressed through the annual budget process.

**Table 3
 Prison and Parole Costs Under HB 19-1263**

Fiscal Year	Prison Bed Impact		Parole Impact		Total Cost
	Number	Operating Cost	Number	Operating Cost	
FY 2019-20	-	-	-	-	\$0
FY 2020-21	(77)	(\$1,535,653)	(116)	(\$266,545)	(\$1,802,198)
FY 2021-22	(77)	(\$3,071,306)	(193)	(\$889,720)	(\$3,961,026)
FY 2022-23	(77)	(\$3,071,306)	(193)	(\$889,720)	(\$3,961,026)
FY 2023-24	(77)	(\$3,071,306)	(193)	(\$889,720)	(\$3,961,026)
Total Cost		(\$10,749,571)		(\$2,935,705)	(\$13,685,276)

Department of Public Safety. This bill may reduce the number of community corrections beds that are needed, as it is assumed that 166 individuals would be sentenced to probation under this bill, rather than to county jail. As a result, this may reduce future appropriations to Community Corrections in the Department of Public Safety. It is assumed that these impacts will be addressed through the annual budget process as they are incurred.

Local Government

Beginning in FY 2019-20, this bill is expected to increase local government revenue, costs, and workload as described below. The exact impact to a particular local government will vary depending on the number of offenses committed within its jurisdiction.

Denver County Court. The bill increases revenue, costs and workload for the Denver County Court, which is managed and funded by the City and County of Denver, to try misdemeanor cases under the bill. Probation services in the Denver County Courts will also experience an increase in revenue, costs, and workload revenue to supervise persons convicted under the bill within Denver County. It is estimated that Denver County Court would see an increase of approximately 1,500 cases annually. It is assumed that increased costs will be offset by grant funds from the state in the amount of \$350,000 in FY 2019-20 and \$700,000 in FY 2020-21.

District attorneys. By changing the classification of drug offenses and limiting the ability of district attorneys to prosecute drug offenses involving residual amounts of drugs, the bill will likely decrease costs and workload for district attorneys. However, there may be an increase in the number of cases that proceed to trial as a result of fewer individuals taking plea bargains. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

County jails. Based on the assumptions listed in the Comparable Crime Analysis section, the bill will increase county jail costs. However, because the courts have the discretion of incarceration or imposing a fine, the precise county impact cannot be determined. Under current law, the state reimburses county jails for housing state inmates. Based on a 2018 Joint Budget Committee Staff county jail survey, the average cost to house an offender in a county jail is \$98.83 per day, but varies significantly from \$43.65 to \$350.21 per day depending on the county. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.93. For informational purposes only, if 193 offenders are sentenced to county jail, statewide jail costs would increase by \$19,074 per day.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, except that sections one through nine take effect January 1, 2020.

State Appropriations

For FY 2019-20, the bill requires the following appropriations to the Judicial Department:

- a reduction of \$297,370 General Fund and 3.2 FTE for trial courts; and
- an increase of \$350,000 General Fund for the county court drug court grant program.

In addition, the bill requires a reduction in appropriations to the DOC of \$13,685,276 for the five-year period starting in FY 2019-20, as shown in Table 3.

State and Local Government Contacts

Corrections
Judicial
Sheriffs

Counties
Local Affairs

District Attorneys
Municipalities