



Legislative
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**REVISED
FISCAL NOTE**

(replaces fiscal note dated April 17, 2019)

Drafting Number: LLS 19-0881
Prime Sponsors: Rep. Herod; Sandridge
 Sen. Marble; Lee
Date: April 26, 2019
Bill Status: Senate Finance
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Bill Topic: OFFENSE LEVEL FOR CONTROLLED SUBSTANCE POSSESSION

Summary of Fiscal Impact:

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- 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 and a substance use and mental health treatment grant program. On an ongoing basis, the bill is expected to decrease state prison operating costs, increase state grant funding, and increase state probation supervision and county jail costs.

Appropriation Summary: For FY 2019-20, this bill requires a net appropriation of \$1.2 million to multiple agencies.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill, as amended by the Senate Judiciary Committee. It has also been updated to reflect new information.

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

		FY 2019-20	FY 2020-21	FY 2021-22
Revenue	Cash Funds	-	\$88,800	\$88,800
	Total	-	\$88,800	\$88,800
Expenditures	General Fund	\$174,408	(\$306,095)	\$134,520
	Cash Funds	\$1,000,000	\$2,000,000	-
	Centrally Appropriated	\$21,484	\$158,303	\$158,303
	Total	\$1,195,893	\$1,852,207	\$292,822
Total FTE		1.3 FTE	8.6 FTE	8.6 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 a schedule I, II, III, IV, or V controlled substance is changed from a level 4 drug felony to a level 1 drug misdemeanor, with some exceptions;
- 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; and
- 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 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. Current law requires a drug offender 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 service if it interferes with treatment or other probation requirements. The useful public service requirement 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 programs. This bill creates the County Court Drug Court Grant Program in the Judicial Department. This grant program will provide funds to an eligible city and county to operate an evidence-based misdemeanor drug court in its county court. The bill also creates a Community Substance Use and Mental Health Services Grant Program in the Department of Local Affairs (DOLA). This grant program will provide funds to counties that provide substance use or mental

health treatment services. To fund the grant program, the bill requires \$1.0 million in FY 2019-20 and \$2.0 million in FY 2020-21 from the Offender Services Cash Fund to be appropriated to DOLA. Beginning in FY 2021-22, the bill requires that at least \$3.0 million be appropriation to DOLA from the General Fund.

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 summarized above. 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 for drug offenses, 3,105 were male, 1,493 were female, and 2 did not have a gender identified. Demographically, 3,840 were White, 395 were Black/African American, 294 were Hispanic, 35 were Asian, 12 were American Indian, and 24 were classified as "Other." The specific controlled substance a person had possession of is not known; therefore, it is unknown precisely how many occurrences would now be reduced to a level 1 drug misdemeanor.

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.

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 179 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 DOC length of stay for a class 4 drug felon 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 148 offenders currently being sentenced to community corrections would instead be sentenced to probation. The sections of the bill implementing offense level changes are effective March 1, 2020. Probation impacts are prorated in FY 2019-20 to two months to reflect a two month delay in misdemeanor hearings. DOC impacts are not expected to begin until March 1, 2021, due to the approximately one year that elapses between arrest and sentencing.

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 \$88,800 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 sources are subject to TABOR.

Probation fees. Offenders on probation pay a \$50 per month probation supervision fee. Based on the assumption that 148 offenders will be sentenced to probation rather than a term of incarceration in the DOC or county jail, or to community corrections, the bill increases revenue by \$88,800 primarily to the Offender Services Cash Fund in 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 increases state expenditures by \$1.2 million in FY 2019-20, \$1.9 million in FY 2020-21, and \$0.3 million in FY 2021-22. As shown in Table 2, Judicial Department impacts 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; DOLA costs will increase to administer a grant program; and the DOC will have a cost reduction estimated at \$1.1 million in FY 2020-21 and \$3.7 million in FY 2021-22 and ongoing. In addition, the bill may reduce costs in the Department of Public Safety. These impacts are further discussed below.

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

- *Trial courts.* This bill will decrease costs and workload for the trial courts in the Judicial Department in several ways. First, drug misdemeanor trials take less time to prosecute than drug felony trials. Second, the bill prohibits district attorneys from prosecuting cases involving residual amounts of drugs, which will decrease workload from these cases. Third, by reclassifying felony drug offenses as drug misdemeanors, the bill shifts workload from the district courts to county courts. 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. This is estimated to result a reduction of 0.5 FTE for magistrates and 1.5 FTE for support staff, which will reduce expenditures by \$59,125 and 0.4 FTE in FY 2019-20 based on trial court workload for 4 months, and \$226,991 and 2.0 FTE in FY 2020-21 and future years. Cost reductions in FY 2019-20 are prorated for the General Fund paydate shift and a March 1 start date.
- *Probation supervision.* The bill increases costs for the Division of Probation in the Judicial Department by \$142,120 and 0.8 FTE in FY 2019-20 and by \$879,274 and 9.6 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. Costs in FY 2019-20 are prorated for the General Fund paydate shift and a May 1 start date.

- *Grant program.* The bill creates a new grant program to support a city and county that does 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 will cost up to \$700,000 annually, which would result in increased state expenditures of up to \$100,000 in FY 2019-20 and up to \$300,000 in FY 2020-21 and ongoing. The workload to establish and administer the grant program is assumed to be minimal.
- *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.

Department of Local Affairs. This bill increases DOLA expenditures by \$1.0 million and 0.9 FTE in FY 2019-20, \$2.0 million and 1.0 FTE in FY 2020-21, and \$3.0 million and 1.0 FTE in FY 2021-22. The bill requires 1.0 FTE for a contract administrator to monitor the grants and to develop policies and procedures necessary for the operation of the grant program, including the application process, the formula for the amount awarded to each eligible county, and verification of the services offered. Costs in FY 2019-20 are prorated for the General Fund paydate shift.

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 increases centrally appropriated costs by \$21,484 in FY 2019-20, and \$158,303 in FY 2020-21 and thereafter.

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

	FY 2019-20	FY 2020-21	FY 2021-22
Judicial Department			
Personal Services – Trial Courts	(\$44,455)	(\$177,822)	(\$177,822)
Personal Services – Probation	\$55,147	\$661,770	\$661,770
Operating and Capital Outlay Costs	\$63,717	\$24,270	\$24,270
Grant Program	\$100,000	\$300,000	\$300,000
Centrally Appropriated Costs*	\$8,585	\$144,066	\$144,066
FTE – Trial Courts	(0.4 FTE)	(2.0 FTE)	(2.0 FTE)
FTE – Probation	0.8 FTE	9.6 FTE	9.6 FTE
Judicial (Subtotal)	\$182,994	\$952,284	\$952,284

**Table 2 (cont.)
 Expenditures Under HB 19-1263**

	FY 2019-20	FY 2020-21	FY 2021-22
Department of Local Affairs			
Personal Services	\$51,675	\$56,373	\$56,373
Operating and Capital Outlay Costs	\$14,533	\$9,830	\$9,830
Grant Program	\$933,792	\$1,933,797	\$2,933,797
Centrally Appropriated Costs*	\$12,899	\$14,237	\$14,237
FTE – Personal Services	0.9 FTE	1.0 FTE	1.0 FTE
DOLA (Subtotal)	\$1,012,899	\$2,014,237	\$3,014,237
Department of Corrections			
Operating Expenses – see Table 3	-	up to (\$1,114,313)	up to (\$3,673,698)
DOC (Subtotal)	-	(\$1,114,313)	(\$3,673,698)
Total Cost	\$1,195,893	\$1,852,208	\$292,823
Total FTE	1.3 FTE	8.6 FTE	8.6 FTE

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

Department of Corrections — five-year fiscal impact. Based on the assumptions discussed in the Comparable Crime Analysis section above, this bill is expected to decrease prison operating and parole costs for the DOC over the five-year period beginning in FY 2019-20, as shown in Table 3. Bed impacts are reduced from offenders being sentenced to county jail or probation for drug offenses instead of to the DOC. Given the March 1, 2020, effective date for this section and due to the year that typically elapses between arrest and sentencing, DOC sentencing changes are not expected to begin until March 1, 2021, and are therefore prorated for four months in FY 2021-22.

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. It is assumed that 179 fewer offenders per year will be convicted and sentenced to the DOC, resulting in 179 fewer offenders being released to parole. It is estimated that future bed impacts will be reduced by up to 72 beds per year, based on average length of stay for a level 4 drug felony, which may reduce future capital construction cost impacts. It is assumed that these savings will be addressed through the annual budget process based on prison population and future bed impact projections.

**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	(24)	(\$949,506)	(36)	(\$164,807)	(\$1,114,313)
FY 2021-22	(72)	(\$2,848,517)	(179)	(\$825,181)	(\$3,673,698)
FY 2022-23	(72)	(\$2,848,517)	(179)	(\$825,181)	(\$3,673,698)
FY 2023-24	(72)	(\$2,848,517)	(179)	(\$825,181)	(\$3,673,698)
Total Cost		(\$10,749,571)		(\$2,935,705)	(\$12,135,407)

Department of Public Safety. This bill may reduce the number of community corrections beds that are needed, as it is assumed that 148 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 \$100,000 in FY 2019-20 and up to \$300,000 in FY 2020-21 and ongoing.

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 179 offenders are sentenced to county jail, statewide jail costs would increase by \$17,691 per day.

Technical Note

This bill requires a \$3 million two-year appropriation to DOLA from the Offender Services Cash Fund which includes \$1 million in FY 2019-20 and \$2 million in FY 2020-21. There is currently a spend down plan that would reduce the fund balance that has been building up in the Offender Services Cash Fund. This plan was approved by the Joint Budget Committee and is part of the FY 2019-20 Long Bill. At the end of FY 2021-22, the fund balance based on this spending plan is projected to be \$2.3 million. The expenditures from the Offender Services Cash Fund required under this bill could impact services to offenders or put the fund into insolvency.

Effective Date

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

State Appropriations

The bill currently includes a General Fund reduction of \$297,270 and 3.2 FTE from the Judicial Department for trial court programs and a General Fund increase of \$350,000 to the Judicial Department for the County Court Drug Court Grant Program in FY 2019-20.

The bill requires the following appropriations:

- a net appropriation of \$174,408 General Fund to the Judicial Department and a net allocation of 0.4 FTE; and
- a \$1,000,000 appropriation from the Offender Services Cash Fund to the Department of Local Affairs and an allocation of 0.9 FTE.

State and Local Government Contacts

Corrections
Judicial
Sheriffs

Counties
Local Affairs

District Attorneys
Municipalities