



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number:	LLS 23-0696	Date:	May 16, 2023
Prime Sponsors:	Sen. Pelton B.; Mullica Rep. Lynch; Snyder	Bill Status:	Postponed Indefinitely
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Bill Topic: **CRIMINAL PENALTY CONTROLLED SUBSTANCE SUPPLIER**

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

The bill would have created a level 1 drug felony for controlled substance distribution that results in death. In future fiscal years, it would have increased state revenue and state and local expenditures on an ongoing basis.

Appropriation Summary: No appropriation was required.

Fiscal Note Status: The fiscal note reflects the reengrossed bill. This bill was postponed indefinitely by the House Judiciary Committee on May 5, 2023; therefore, the impacts identified in this analysis do not take effect.

Summary of Legislation

The bill makes it a level 1 drug felony where unlawful distribution, manufacture, dispensing, or sale of any amount of a schedule I or II controlled substance results in death. This new felony is not subject to mandatory sentencing requirements unless the case involves more than:

- 225 grams of a schedule I or schedule II controlled substance;
- 112 grams of methamphetamine, heroin, ketamine, or cathinones;
- 50 milligrams of flunitrazepam; or
- 50 grams of fentanyl, carfentanil, benzimidazole opiate, or an analog thereof.

An exception is provided in cases where the distribution or transfer contains a smaller amount of a drug—less than 4 grams of a schedule I or II controlled substance; 2 grams of methamphetamine, heroin, ketamine, or cathinones; or 1 gram of fentanyl, carfentanil, benzimidazole opiate, or an analog thereof—and the distribution or transfer occurs without remuneration for the purpose of consuming all of the drug with another person at the time the drugs were exchanged.

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 section outlines crimes that are comparable to the offense in this bill and discusses assumptions on future rates of criminal convictions resulting from the bill.

Prior conviction data. This bill creates a new level 1 drug felony for controlled substance distribution resulting in death. A similar provision was enacted in House Bill 22-1326 for fentanyl-related deaths; however, adequate data is unavailable. To form an estimate on the prevalence of this new crime, the fiscal note analyzed cases containing at least one charge of manslaughter and one charge of controlled substance distribution as a comparable crime. From FY 2019-20 to FY 2021-22, nine persons have been convicted and sentenced for both offenses in the same case. Of the persons convicted, 8 were male and 1 was female. Demographically, 6 were White and 3 were Black/African American.

Assumptions. This analysis assumes that of the existing filings where manslaughter and controlled substances were both charged in a conviction, at least two cases per year will result in a higher sentence under the bill—a drug felony 1 instead of a lesser drug felony. The average length of stay for a drug felony 2 is 29.2 months with parole lasting 15.3 months, while the average length of stay for a drug felony 1 is 60.7 months with parole lasting 21.2 months. As a result, the sentencing impact does not occur until FY 2026-27, assuming that it takes until FY 2024-25 for convictions under the bill to be adjudicated.

State Revenue

Criminal fines and court fees. By creating a new felony offense, the bill will increase state revenue from criminal fines and court fees by a minimal amount beginning in FY 2024-25, 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 1 drug felony is \$5,000 to \$1.0 million. 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 Expenditures

This bill increases workload and potential costs in the Judicial Department beginning in FY 2023-24, and will increase costs in the Department of Corrections starting in FY 2026-27, as discussed below.

Judicial Department. This bill will increase workload and costs for the trial courts in the Judicial Department to process a sentence enhanced penalty for controlled substance distribution resulting in death. The impact to the trial courts can be accomplished within existing appropriations.

Costs will 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. It is anticipated that defending a distribution resulting in death will be equivalent to the work to defend a murder case. Depending on the number of case filings, these agencies will seek resources through the annual budget process to cover costs resulting from additional complexity in these cases.

Department of Corrections. Section 2-2-701, C.R.S., requires Legislative Council Staff to provide information to the General Assembly on long-term costs for prison capital construction, operations, and parole for any bill that potentially increases periods of imprisonment in the Department of Corrections. These impacts are described below.

- **Operating costs (five-year fiscal impact).** Based on the assumptions above, the bill increases prison operating costs for the DOC by a total of \$65,106 over the five-year period beginning in FY 2023-24. This fiscal note assumes no prison operating costs 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 fiscal note assumes that the DOC will shift prisoners as necessary to utilize the private prison rate of \$27,101 per year per inmate, and that parole costs will be \$7,749 per year per parolee. By extending sentences in these cases, future offenders will be in prison longer, which will delay the start of their time on parole relative to current law. DOC costs, which will start in FY 2026-27, are outlined in Table 2.

**Table 2
 Prison and Parole Operating Costs Under HB 22-1079**

Fiscal Year	Bed Impact	Parole Impact	Operating Cost
FY 2023-24	-	-	-
FY 2024-25	-	-	-
FY 2025-26	-	-	-
FY 2026-27	1.1	(1.1)	\$21,868
FY 2027-28	2.0	(1.4)	\$43,238
Total Prison Operating Cost			\$65,106

- **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 the DOC to house additional inmates. Based on the average per bed construction costs of previous prison facilities, capital construction costs of about \$357,000 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.

Local Government

Beginning in FY 2023-24, this bill is expected to increase district attorney expenditures to prosecute a new class 1 drug felony. As discussed in the Comparable Crime Section above, the fiscal note assumes that at least two cases per year will be charged as a higher drug felony level under the bill, which requires additional district attorney time to prosecute the case. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed. It applies to offenses committed on or after this date.

State and Local Government Contacts

Corrections
District Attorneys
Judicial

Counties
Human Services

Denver County Courts
Information Technology