



**Colorado
Legislative
Council
Staff**

Bill 3

FISCAL NOTE

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

Drafting Number: LLS 18-0259
Prime Sponsor(s):

Date: October 27, 2017
Bill Status: Opioid and Other Substance Use Disorders Interim Study Committee Bill Request

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BILL TOPIC: OPIOID HARM REDUCTION

| Fiscal Impact Summary | FY 2018-2019 | FY 2019-2020 |
|--|-------------------------|-------------------------|
| State Revenue | up to (\$38,250) | up to (\$76,500) |
| Cash Funds | up to (\$38,250) | up to (\$76,500) |
| State Expenditures | (\$83,100) | (\$166,198) |
| General Fund | (\$65,326) | (\$130,651) |
| Centrally Appropriated Costs | (\$17,774) | (\$35,547) |
| FTE Position Change | (2.0 FTE) | (2.0 FTE) |
| Appropriation Required: Reduction of \$65,326 - Judicial Department (FY 2018-19). | | |
| Future Year Impacts: Ongoing revenue and expenditure reduction. | | |

Note: This fiscal note is preliminary since the bill draft does not specify all necessary details relating to the increase in criminal penalties relating to synthetic opiates. See Technical Note section for more information.

Summary of Legislation

This bill, *requested by the Opioid and Other Substance Use Disorders Interim Study Committee*, enacts several changes regarding opioid use and public health and safety.

First, concerning the use of syringes, the bill:

- exempts supervised injection facilities from state laws regarding public nuisance;
- allows county and district public health agencies to create and operate clean syringe exchange programs without prior approval of the county or district board of health;
- allows clean syringe exchange programs to be operated in a hospital; and
- exempts individuals who provide clean syringes in accordance with a clean syringe exchange program from civil liability resulting from the syringe exchange.

Second, the bill allows schools and school districts to enact policies under which a school may obtain opiate antagonists for administering to persons overdosing on an opiate. A trained employee or agent of a school may administer the opiate antagonist in accordance with the school or school district policy.

Third, the bill removes synthetic opiates from the list of schedule II drugs and creates new, unspecified drug felonies for the unlawful distribution, manufacturing, dispensing, or sale of synthetic opiates. The bill exempts labeling by a pharmacist from the definition of unlawful dispensing. Under current law, unlawful distribution, manufacturing, dispensing or sale of a schedule II drug may be a level 1, 2 or 3 drug felony, depending on the amount of the drug involved and whether or not it involves a minor. Unlawful possession of a schedule II drug is a level 4 drug felony.

Comparable Crime

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 calendar year 2016, there were 4,274 adults and 76 juveniles convicted and sentenced to probation for unlawful possession or use of a schedule II controlled substance, including synthetic opiates. It is unknown how many of these cases involved synthetic opiates versus other schedule II drugs. As of this writing, racial and gender data are not available on these possession-related convictions, nor is data available on convictions involving the unlawful distribution, manufacturing, dispensing, or sale of schedule I and II controlled substances. This information will be updated when the fiscal note is revised for introduction, if new information becomes available.

Assumptions and Data

As discussed in the Comparable Crime section, more than 4,300 adults and juveniles were convicted of possession or use-related offenses involving schedule II controlled substances and sentenced to probation in calendar year 2016. While it is unknown which of these offenders were convicted due to possession of synthetic opiates, the fiscal note assumes that 3.5 percent of these convictions (150 persons sentenced to probation) involve synthetic opiates. This estimate is based on drug test data on the number of adult probationers with opioids in their system and adjusting downward to exclude heroin and legally prescribed medications. The actual number of convictions for possession of synthetic opiates may differ from this amount. Lastly, the fiscal note assumes that the impact of this change will begin in January 2019, five months after the bill takes effect to account for existing cases in the criminal justice system winding down prior to the impacts of this bill being observed in the probation caseload.

State Revenue

On net, the bill decreases revenue to the Judicial Department by up to \$38,250 in FY 2018-19 and up to \$76,500 per year starting in FY 2019-20. It may also impact other fines and fees. These impacts are discussed below.

Probation fees. Persons on probation pay a \$50 per month probation supervision fee. Based on 150 fewer persons sentenced to probation, and assuming 15 percent of these persons are indigent and unable to pay the fee, the elimination of unlawful possession of synthetic opiates will decrease cash fund revenue to the Judicial Department by \$76,500 per year. The first-year impact is prorated to reflect a half-year impact based on the effective date of the bill and the lag before the changes impact probation caseload.

Court fees. To the extent the changes in criminal penalties under the bills affect the number of persons charged with offenses related to synthetic opiates, court fees collected and deposited to various cash funds in the Judicial Department may be affected. The exact impact cannot be estimated at this time.

Criminal fines. Beginning in FY 2018-19, this bill may both increase and decrease state revenue from criminal fines, credited to the Fines Collection Cash Fund in the Judicial Department. By eliminating the offense for possession of synthetic opiates, fine revenue will decrease. Fine revenue may also increase to the extent the bill enhances the penalty for unlawful distribution, manufacturing, dispensing, or sale of synthetic opiates. However, without knowing the exact drug felony level for new offenses created under the bill, an estimate of this impact cannot be provided at this time. In addition, the courts have the discretion of incarceration, imposing a fine, or both, which will also impact the revenue collected under any proposed change to the drug felony level for these offenses. The current fine penalties for drug felonies are as follows:

- level 1 drug felony - \$5,000 to \$1,000,000;
- level 2 drug felony - \$3,000 to \$750,000;
- level 3 drug felony - \$2,000 to \$500,000; and
- level 4 drug felony - \$1,000 to \$100,000.

State Expenditures

The bill decreases costs in the Judicial Department by \$83,100 and 1.0 FTE in FY 2018-19 and \$166,198 and 2.0 FTE per year starting in FY 2019-20. In other areas, the bill potentially increases workload and costs for state agencies. These impacts are discussed below.

Elimination of offense for unlawful possession of synthetic opiates. By removing synthetic opiates from the list of schedule II controlled substances, the bill eliminates the criminal offense of unlawful possession of synthetic opiates. This offense, a level 4 drug felony, currently applies to synthetic opiates due to their presence on the list of schedule II controlled substances. As outlined in the Assumptions section, there are expected to be 150 fewer persons sentenced to probation each year for possession of a synthetic opiate.

Based on the typical mix of supervision levels, it is assumed that each probationer requires an average of 4 hours of initial intake time (600 hours) and 2 hours per month of probation officer supervision time (3,600 hours), resulting in a total reduction of 4,200 hours of probation officer staff time, or 2.0 FTE. This will result in cost savings to the Judicial Department of \$166,198 per year, as shown in Table 1. First-year cost savings are prorated to reflect a half-year impact based on the effective date of the bill and the lag before the bill's changes impact probation caseload.

| Table 1. Cost Savings Under Bill 3. | | |
|---|-------------------|--------------------|
| Cost Components | FY 2018-19 | FY 2019-20 |
| Personal Services | (\$64,376) | (\$128,751) |
| FTE | (1.0 FTE) | (2.0 FTE) |
| Operating Expenses and Capital Outlay Costs | (950) | (1,900) |
| Centrally Appropriated Costs* | (17,774) | (35,547) |
| TOTAL | (\$83,100) | (\$166,198) |

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

Penalties for unlawful distribution, manufacturing, dispensing, or sale of synthetic opioids. Starting in FY 2018-19, this bill may increase workload and state expenditures in the Judicial Department, the Office of the State Public Defender, and the Office of the Alternate Defense Counsel relating to offenses involving synthetic opioids. It may also increase state General Fund expenditures in the Department of Corrections, if additional offenders are sentenced to a new or longer term of incarceration in a state prison. However, because the bill does not specify the exact drug felony level for these offenses, an estimate of fiscal impact cannot be provided at this time.

Department of Corrections. While most persons convicted of possession of a synthetic opiate are sentenced to probation, they may also be incarcerated in a state prison, depending on their criminal history and other charges brought. Thus, elimination of this level 4 drug felony may decrease persons sentenced to DOC. At the same time, to the extent the bill increases penalties for unlawful distribution, manufacturing, dispensing, or sale of synthetic opiates, additional persons may be incarcerated. The net impact of this bill on the DOC cannot be estimated at this time.

Clean syringe exchange programs. The bill makes the creation of clean syringe exchange programs easier at the local level, which may increase workload and costs in the Colorado Department of Public Health and Environment (CDPHE). The CDPHE oversees and provides funding to these types of programs. While no immediate action is required by the CDPHE under the bill, to the extent that additional counties and health districts decide to create clean syringe exchange programs, workload will increase. These additional programs may seek funding through the CDPHE, which may be required to seek additional appropriations, based on local demand, through the annual budget process.

Supervised injection sites. By allowing supervised injection facilities for intravenous drug users, workload and costs may increase for several state agencies, including the Department of Law to provide legal guidance on these facilities to state agencies, and the CDPHE to monitor and track these facilities from a public health perspective. In addition, the trial courts in the Judicial Department may hear civil and criminal cases that involve offenses or issues involving supervised injection sites, which could increase court workload. Exempting supervised injection sites from public nuisance laws will not result in any cost or workload savings since there are no such facilities in the state to which the nuisance laws have been applied.

Use of opiate antagonists in schools. The Colorado Department of Education may be required to promulgate rules or provide guidance to school districts concerning the development of local policies concerning use of opiate antagonists. This impact is assumed to be minimal and can be accomplished within existing appropriations.

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 health, life, and dental insurance; supplemental employee retirement payments; and indirect cost recoveries are estimated to be reduced by \$35,547 per year starting in FY 2018-19.

Local Government Impact

The bill may impact local governments in several ways, as discussed below.

Clean syringe exchange programs. County and district health agencies may be more likely to establish clean syringe exchange programs in their jurisdictions under the streamlined process created by bill. Establishing an syringe exchange program, which remains at the discretion of local health agencies, will increase local costs and workload.

Supervised injection facilities. allowing supervised injection facilities may increase costs and workload for local law enforcement agencies, district attorneys, and other units of local government. Given that there are no similar facilities in the United States, it is difficult to predict the impacts to local governments that allow these facilities. There may be costs associated with licensing, zoning, and regulating these facilities, and for law enforcement agencies to monitor the facilities and nearby areas. At the same time, there may be savings from local law enforcement agencies responding to fewer overdoses and from local governments having less drug paraphernalia such as used syringes that must be removed from public spaces.

School district impacts. The bill increases costs and workload for training, policy development, and obtaining opiate antagonists for schools and school districts that decide to allow school employees to administer these drugs. The decision to allow employees to administer opiate antagonists is at the discretion of schools and school districts.

District attorneys. On net, this bill will decrease workload and costs for district attorneys that investigate and prosecute offenses under the bill by eliminating the possession-related offense for synthetic opiates. To the extent the bill strengthens other penalties related to synthetic opiates, workload may increase if more cases go to trial. The exact impact will depend on the drug felony levels set in the bill.

Technical Note

The bill does not specify the exact level of drug felony for offenses involving synthetic opioids; thus, the fiscal note cannot provide a precise estimate of how costs and workload will differ from current law under the bill. In addition, by removing synthetic opioids from the list of schedule II drugs, the bill may impact various state and federal regulations and laws involving treatment of schedule II drugs by pharmacies, pharmacists, physicians, health facilities, and drug manufacturers, as well as eliminate the offense for unlawful possession of synthetic opiates.

State Appropriations

For FY 2018-19, the bill requires a reduction in General Fund appropriations to the Judicial Department of \$83,100 and a reduction of 1.0 FTE.

Effective Date

The bill takes effect August 8, 2018, if the General Assembly adjourns on May 9, 2018, as scheduled, and no referendum petition is filed. It applies to offenses committed on or after this effective date.

State and Local Government Contacts

Corrections
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