



**Legislative
Council Staff**

Nonpartisan Services for Colorado's Legislature

HB 20-1150

FISCAL NOTE

Drafting Number: LLS 20-0342
Prime Sponsors: Rep. McKean

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Bill Status: House Judiciary
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Bill Topic: **REPEAL HB 19-1263 PENALTIES FOR DRUG POSSESSION**

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" 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 repeals House Bill 19-1263, which reclassified a number of drug crimes and created a substance use and mental health services grant program. This bill will both increase and decrease state and local revenue and expenditures beginning in FY 2020-21.

Appropriation Summary: This bill requires a \$2.4 million reduction in appropriations to the Judicial Department and the Department of Local Affairs; an appropriation of \$530,583 to the Public Defender; and a total five-year appropriation of \$13.6 million to the Department of Corrections. Capital construction funding of \$10.9 million may be appropriated. See State Appropriations section.

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

**Table 1
State Fiscal Impacts Under HB 20-1150**

		FY 2020-21	FY 2021-22
Revenue	Cash Funds	-	(\$88,800)
	Total	-	(\$88,800)
Expenditures	General Fund	(\$1,843,843)	\$1,483,221
	Centrally Appropriated	(\$30,927)	(\$7,705)
	Total	(\$1,874,770)	\$1,475,516
	Total FTE	(0.7 FTE)	0.7 FTE
Transfers		-	-
TABOR Refund	General Fund	-	(\$88,800)

Summary of Legislation

In 2019, the General Assembly passed House Bill 19-1263, which reclassified several drug offenses from drug felonies to drug misdemeanors, made changes to sentencing, and created the Community Substance Use and Mental Health Services Grant Program in the Department of Local Affairs (DOLA). The offense reclassifications in HB 19-1263 take effect March 1, 2020. This bill repeals HB 19-1263, which:

- makes possession of any schedule I or II controlled substance a level 4 drug felony;
- allows district attorneys to charge a person for any minuscule, residual, or unusable amount of a controlled substance;
- makes possession of more than 12 ounces of marijuana or more than 3 ounces of marijuana concentrate a level 4 drug felony;
- makes possession of less than 3 ounces of marijuana concentrate a level 1 drug misdemeanor;
- allows a law enforcement officer to arrest a person for possessing less than 2 ounces of marijuana, requires the person to sign a written promise to appear in court before being released, and makes failure to appear punishable class 3 misdemeanor;
- removes the sentence of imprisonment in jail for the first offense of abusing toxic vapors;
- removes the discretion of the court to suspend any sentence to community service if the community service interferes with treatment;
- requires any drug offender to be to get fingerprinted and photographed;
- removes the immunity for persons who suffer or report an overdose if the person possess more than 12 ounces of marijuana or more than 3 ounces of marijuana concentrate;
- removes the General Assembly's intent to limit imprisonment sentencing for level 1 and 2 drug misdemeanor drug possession offenses;
- removes possession of more than 4 grams a schedule I or II controlled substance from the eligible list of crimes than can be vacated;
- makes possession of more than 4 grams of any schedule I or II controlled substance a habitual offense; and
- repeals the Community Substance Use and Mental Health Services Grant Program in DOLA.

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 crimes that are comparable to the offense in this bill and discuss assumptions on future rates of criminal convictions under the bill.

Prior conviction data. This bill reclassifies the existing offenses of possession of any schedule I or II controlled substance, possession of more than 12 ounces of marijuana or more than 3 ounces of marijuana concentrate, possession of less than 3 ounces of marijuana concentrate, and creates the offense of failing to return to the court for a hearing. The number of offenders sentenced for these crimes in 2019 and the demographic information of the offenders can be found below.

- *Possession of a schedule I or II controlled substance.* In 2019, there were 5,823 offenders convicted and sentenced for this offense. Of the persons convicted, 3,900 were male, 1,921 were female, and 2 did not have a gender identified. Demographically, 4,889 were White, 504 were African American, 322 were Hispanic, 39 were Asian, 31 were American Indian, 37 were classified as "Other," and 1 did not have a race identified.

- *Possession more than 12 ounces of marijuana or more than 3 ounces of marijuana concentrate.* In 2019, there were 79 offenders convicted and sentenced for possessing 6 to 12 ounces of marijuana or less than 3 ounces of marijuana concentrate. Of the persons convicted, 72 were male and 7 were female. Demographically, 60 were White, 10 were African American, and 9 were Hispanic, 39 were Asian, 31 were American Indian, 37 were classified as "Other," and 1 did not have a race identified.
- *Possession of less than 3 ounces of marijuana concentrate.* In 2019, there were 14 offenders convicted and sentenced for possessing 6 to 12 ounces of marijuana or less than 3 ounces of marijuana concentrate. Of the persons convicted, all 14 were male. Demographically, 13 were White and 1 was African American.
- *Failure to report to court.* In 2019, there were no convictions and sentences for failing to report to court after signing a written promise.

Assumptions. Based on the fiscal note for HB 19-1263, this analysis assumes that there will be approximately 179 more offenders convicted and sentenced to the Department of Corrections (DOC), instead of being sentenced to county jail or probation. The average DOC length of stay for a class 4 drug felony is 4 months with an average parole length of stay of 10 months. Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Revenue

Starting in FY 2021-22, state revenue will decrease by \$88,800 due to offenders no longer being sentenced to the probation. It is estimated that a total of 148 offenders will no longer be sentenced to probation. Currently, offenders on probation pay a \$50 per month probation supervision fee. The amount identified above primarily goes to the Offender Services Cash Fund in the Judicial Department. In addition, starting in FY 2020-21, the bill will increase state revenue from criminal fines and court fees due to the increase in classification of certain drug crimes. This increase is assumed to be minimal.

State Expenditures

On net, the bill will decrease costs in FY 2020-21 by \$1.9 million and 0.7 FTE, and increase costs by \$1.5 million and 0.7 FTE in FY 2021-22 from the General Fund. Costs are in the Judicial Department, DOLA, the Office of the Public Defender, and the DOC as shown in Table 2 and discussed below. In addition, the bill will increase state General Fund expenditures by a total \$13.6 million in the DOC over a five-year period, and may increase capital construction costs in the DOC. These impacts are described below.

Table 2*
Expenditures Under HB 20-1150

Cost Components	FY 2020-21	FY 2021-22
Judicial Department		
Personal Services - Trial Courts	\$177,822	\$177,822
Operating Expenses - Trial Courts	\$4,275	\$4,275
Personal Services - Probation	(\$661,770)	(\$661,770)
Operating Expenses and Capital Outlay - Probation	(\$28,545)	(\$28,545)
Centrally Appropriated Costs**	(\$144,065)	(\$144,065)
FTE – Personal Services (Trial Courts)	2.0 FTE	2.0 FTE
FTE – Personal Services (Probation)	(9.6 FTE)	(9.6 FTE)
Judicial (Subtotal)	(\$652,283)	(\$652,283)
Department of Local Affairs		
Personal Services	(\$51,675)	(\$56,373)
Operating Expenses and Capital Outlay Costs	(\$14,533)	(\$9,830)
Grant	(\$1,800,000)	(\$1,800,000)
Centrally Appropriated Costs**	(\$12,899)	(\$14,237)
FTE – Personal Services	(0.9 FTE)	(1.0 FTE)
DOLA (Subtotal)	(\$1,879,107)	(\$1,880,440)
Office of the Public Defender		
Personal Services	\$462,396	\$554,877
Operating Expenses and Capital Outlay Costs	\$68,187	\$13,657
Centrally Appropriated Costs**	\$126,037	\$150,597
FTE – Personal Services	7.8 FTE	9.3 FTE
Public Defender (Subtotal)	\$656,620	\$719,131
Department of Corrections		
Operating Costs	-	\$3,289,108
DOC (Subtotal)	\$0	\$3,289,108
Total	(\$1,874,770)	\$1,475,516
Total FTE	(0.7 FTE)	0.7 FTE

* For ease of comparison, Judicial Department and DOLA expenditures match the expenditures identified in HB19-1263. Public Defender expenditures are new and discussed below. DOC expenditures reflect the current average length of stay.

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

Judicial Department – Trial Courts. Starting in FY 2020-21, the bill will increase costs in the trial courts. First, by increasing the classification for some drug offenses from misdemeanors to felonies, cases will take more time. Second, since district attorneys will be able to prosecute offenders for residual residue, more cases may be presented in front of the courts. Finally, reclassifying some misdemeanors will move cases from county court to district court. Because Denver County Court is administered by the city and county of Denver, and district court is administered by the state, the bill will require an additional 2.0 FTE to handle the additional cases. This FTE includes 0.5 FTE magistrate and 1.5 FTE support staff.

Judicial Department – Probation. Starting in FY 2020-21, the bill will reduce expenditures in the Probation Division of the Judicial Department due to offenders sentenced to the DOC instead of probation. Based on the fiscal note for HB 19-1263, this fiscal note estimates the bill will reduce probation costs by 9.6 FTE.

Department of Local Affairs. By repealing the Community Substance Use and Mental Health Services Grant Program, expenditures in DOLA will decrease by \$1.9 million and 1.0 FTE starting in FY 2020-21.

Office of the Public Defender and Alternative Defense Counsel. Starting in FY 2020-21, expenditures in the Office of the Public Defender will increase by 9.3 FTE to defend the newly classified drug felony cases and new drug misdemeanor cases. This amount includes costs for new attorneys, new investigators, and new support staff. To the extent there are conflicts of interests with a public defender, expenditures in the Office of Alternative Defense Council (OADC) will increase. For informational purposes, a drug misdemeanor costs the OADC \$329 per case and a drug felony costs \$629 per case; therefore, increasing drug misdemeanors to felonies will increase expenditures in the OADC by \$301 per case. Because it is unknown how often a public defender will have a conflict of interest, the fiscal note assumes that any change in OADC appropriations will be requested through the annual budget process.

Department of Corrections operating and parole costs (five-year fiscal impact). Based on the assumptions provided in the Comparable Crime Analysis section, this bill increases prison operating costs for the DOC by a total of \$13.6 million over the five-year period beginning in FY 2021-22. The fiscal note assumes no prison operating impacts 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, he or she is assigned to parole. Table 3 shows the estimated cost of the bill over the next five fiscal years. If more offenders are sentenced to the DOC then what is identified in the assumption section, the fiscal note assumes that additional resources will be requested through the annual budget process.

**Table 3
Prison and Parole Costs Under Bill**

Fiscal Year	Bed Impact	Parole Impact	Operating Cost
FY 2020-21	-	-	-
FY 2021-22	61	118	\$3,289,108
FY 2022-23	61	144	\$3,442,128
FY 2023-24	61	144	\$3,442,128
FY 2024-25	61	144	\$3,442,128
Total Cost			\$13,615,492

Department of Corrections 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 \$10.9 million 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 and a reappropriation of this funding 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.

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 insurance and supplemental employee retirement payments, are estimated to be reduced by \$30,927 in FY 2020-21 and \$7,705 in FY 2021-22.

TABOR refunds. The bill is expected to decrease state General Fund obligations for TABOR refunds by \$88,800 in FY 2021-22. Under current law and the December 2019 Legislative Council Staff forecast, the bill will correspondingly decrease the amount refunded to taxpayers via sales tax refunds made available on income tax returns for tax years 2021 and 2022, respectively. A forecast of state revenue subject to TABOR is not available beyond FY 2021-22.

Local Government Impact

Beginning in FY 2020-21, this bill is expected to increase local government 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.

District attorneys. The bill increases workload and costs for district attorneys to prosecute a new class 3 misdemeanor offense, and to prosecute any cases where there is residual residue. In addition, due to the reclassification of crimes from drug misdemeanors to drug felonies, workload will increase due to longer cases. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

County jails. To the extent offenders are sentenced to the DOC instead of jail, costs to county's will decrease. In addition, by removing the sentence of imprisonment for abusing toxic vapors, costs in county jails will also decrease. However, by increasing the misdemeanor offense for possessing less than 3 ounces of marijuana concentrate, costs for county jails may increase.

Denver County Court. Starting in FY 2020-21, revenue and expenditures to the Denver County Court will decrease due to moving some cases to district court. The Denver County Court is funded by the City and County of Denver.

Effective Date

The bill takes effect August 5, 2020, if the General Assembly adjourns on May 6, 2020, as scheduled, and no referendum petition is filed. The bill applies to cases committed on or after this date.

State Appropriations

The bill requires the following changes in General Fund appropriations:

- a reduction of \$508,218 and 7.2 FTE from the Judicial Department;
- a reduction of \$1,866,208 and 0.9 FTE from the Department of Local Affairs;
- an increase of \$530,583 and 7.8 FTE to the Office of the Public Defender; and
- an increase of \$13,615,492 for the five-year DOC operating impacts identified in Table 3. As discussed in the DOC capital construction costs section above, the General Assembly may appropriate \$10,861,745 for prison bed construction, if needed.

State and Local Government Contacts

Corrections
Human Services
Judicial
Municipalities
Public Safety

Counties
Information Technology
Local Affairs
Public Health and Environment
Sheriffs