

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4428-01  
Bill No.: SB 589  
Subject: Crimes and Punishment; Drugs and Controlled Substances  
Type: Original  
Date: January 26, 2018

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Bill Summary: This proposal increases penalties for the distribution of heroin.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>				
FUND AFFECTED	FY 2019	FY 2020	FY 2021	Fully Implemented (FY 2026)
General Revenue	\$0	\$0	\$0	(\$1,475,650)
<b>Total Estimated Net Effect on General Revenue</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>(\$1,475,650)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>				
FUND AFFECTED	FY 2019	FY 2020	FY 2021	Fully Implemented (FY 2026)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses. This fiscal note contains 7 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>				
<b>FUND AFFECTED</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>Fully Implemented (FY 2026)</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>				
<b>FUND AFFECTED</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>Fully Implemented (FY 2026)</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>				
<b>FUND AFFECTED</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>Fully Implemented (FY 2026)</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Office of the State Courts Administrator** and the **Office of Prosecution Services** each assume the proposal would not fiscally impact their respective agencies.

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are faced with the enhanced penalties for distribution of heroin - a class B felony.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases where the right to counsel attaches.

**Oversight** assumes the SPD can absorb the additional caseload that may result from this proposal.

Officials from the **Department of Corrections (DOC)** state the bill proposes to make the distribution of a controlled substance that contains heroin a class B felony and a dangerous felony. The distribution of a controlled substance since January 2017 is a class C felony. In FY17, the average sentence for the distribution of a controlled substance (as a class C felony) was 6.4 years and the time to first release was 2.1 years. If the offense for distributing heroin became a class B felony, the average sentence would be expected to increase to 8.2 years (the average sentence it was before the criminal code revision) and, because the offense will be a dangerous felony, the time served will be 7 years (85% of the sentence). The impact includes an estimate of 40% of the sentence after the first release for the incarceration of parole returns. The impact of the change is an increase in the prison population but a decrease in the parole population because of longer prison time served.

The DOC does not always have the sentencing information for drug offenses to identify the type of drug, and therefore has to estimate the offenses involving heroin based upon those sentences where the type of drug is recorded. In FY2017, it is estimated that of the 383 offenders received for distribution of a controlled substance, 56 offenders were admitted to serve a term sentence for heroin distribution (15% of all drugs), and this will result in an increase of 207 in the prison population by FY26. The parole population will decline to a maximum of 146 in FY25, when the offenders will begin to be released after serving the 85% as dangerous felons. Because of the shorter parole time, the field population will remain 106 lower after the sentencing changes have worked through the system following FY26.

ASSUMPTION (continued)

The FY18 impact has increased from the fiscal impact prepared in FY17, as there has been an increase in the number of offenders sentenced for heroin distribution in FY17.

**Enhanced Sentencing for Heroin Drug Distribution**

	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028
<b>New Admissions</b>										
Current Law	56	56	56	56	56	56	56	56	56	56
After Legislation	56	56	56	56	56	56	56	56	56	56
<b>Cumulative Populations</b>										
Prison				11	67	123	179	207	207	207
Parole				-11	-67	-123	-146	-118	-106	-106
Probation										
<b>Impact</b>										
Prison Population				11	67	123	179	207	207	207
Field Population				-11	-67	-123	-146	-118	-106	-106
Population Change							34	90	101	101
P&P Officers+ or -		0	0	0	0	0	0	0	0	0

If this impact statement has changed from statements submitted in previous years, it is because the Department of Corrections has changed the way probation and parole daily costs are calculated to more accurately reflect the way the Division of Probation and Parole is staffed across the entire state.

In December 2017, the DOC reevaluated the calculation used for computing the Probation and Parole average daily cost of supervision and revised the cost calculation to be used for 2018 fiscal notes. The new calculation estimates the increase/decrease in caseloads at each Probation and Parole district due to the proposed legislative change. For the purposes of fiscal note calculations, the DOC averaged district caseloads across the state and came up with an average caseload of 51 offender cases per officer. The new calculation assumes that an increase/decrease of 51 cases in a district would result in a change in costs/cost avoidance equal to the cost of one FTE staff person in the district. Increases/decreases smaller than 51 offenders are assumed to be absorbable.

In instances where the proposed legislation would only affect a specific caseload, such as sex offenders, the DOC will use the average caseload figure for that specific type of offender to calculate cost increases/decreases.

ASSUMPTION (continued)

The DOC cost of incarceration is \$17.003 per day or an annual cost of \$6,206 per offender. The DOC cost of probation or parole is determined by the number of P&P Officer II positions that would be needed to cover the new caseload.

The DOC would assume this legislation will result in long term cost as indicated in the chart below.

	# to prison	Cost per year	Total Costs for <b>prison</b>	# to probation & parole	Fewer P&P officers from reduction	Total cost for <b>probation and parole</b>	Grand Total - Prison and Probation (includes and 2% inflation)
Year 1	0	(\$6,206)	\$0	0	none	\$0	\$0
Year 2	0	(\$6,206)	\$0	0	none	\$0	\$0
Year 3	0	(\$6,206)	\$0	0	none	\$0	\$0
Year 4	11	(\$6,206)	(\$72,444)	(11)	none	\$0	(\$72,444)
Year 5	67	(\$6,206)	(\$450,077)	(67)	none	\$0	(\$450,077)
Year 6	123	(\$6,206)	(\$842,787)	(123)	none	\$0	(\$842,787)
Year 7	179	(\$6,206)	(\$1,251,025)	(146)	none	\$0	(\$1,251,025)
Year 8	207	(\$6,206)	(\$1,475,650)	(118)	none	\$0	(\$1,475,650)
Year 9	207	(\$6,206)	(\$1,505,163)	(106)	none	\$0	(\$1,505,163)
Year 10	207	(\$6,206)	(\$1,535,266)	(106)	none	\$0	(\$1,535,266)

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021	Fully Implemented (FY 2026)
<b>GENERAL REVENUE</b>				
<u>Costs</u> - DOC increased prison costs resulting from increased penalties for distribution of heroin				
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>(\$1,475,650)</u>
<b>ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND</b>				
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>(\$1,475,650)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021	Fully Implemented (FY 2026)
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

Under current law, the distribution of heroin is not distinguished from the distribution of most other controlled substances, and is a Class C felony. This act provides that the distribution of any substance containing a detectable amount of heroin is a Class B felony.

This act provides that the distribution of heroin is a dangerous felony as defined by statute. Any offender who has been found guilty of a dangerous felony and is committed to the Department of Corrections shall be required to serve a minimum prison term of eighty-five percent of the

FISCAL DESCRIPTION (continued)

sentence imposed by the court or until the offender attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Prosecution Services  
Office of the State Public Defender  
Department of Corrections  
Office of the State Courts Administrator

Ross Strobe



Acting Director  
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