



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2023 Biennium

**Bill #** HB0391

**Title:** Revise and enhance penalties for criminal distribution of dangerous drugs

**Primary Sponsor:** Fleming, Frank

**Status:** As Introduced

- Significant Local Gov Impact     
  Needs to be included in HB 2     
  Technical Concerns  
 Included in the Executive Budget     
  Significant Long-Term Impacts     
  Dedicated Revenue Form Attached

### FISCAL SUMMARY

	<u>FY 2022 Difference</u>	<u>FY 2023 Difference</u>	<u>FY 2024 Difference</u>	<u>FY 2025 Difference</u>
<b>Expenditures:</b>				
General Fund	\$93,196	\$241,333	\$368,989	\$489,662
<b>Revenue:</b>				
General Fund	\$0	\$0	\$0	\$0
<b>Net Impact-General Fund Balance:</b>	<u>(\$93,196)</u>	<u>(\$241,333)</u>	<u>(\$368,989)</u>	<u>(\$489,662)</u>

**Description of fiscal impact:** The bill provides that if the offense of Criminal Distribution of Dangerous Drugs “results in the death of an individual from the use of any dangerous drug that was distributed, the person who provided the drugs shall be imprisoned in the state prison for a term of not less than 10 years or more than 100 years and may be fined not more than \$100,000”. HB 391 would have a fiscal impact on the Department of Corrections (DOC) if there are cases which could be prosecuted due to the changes proposed in this bill as it creates mandatory minimum sentences of 10 years. The Office of Public Defender would also have increased costs,

### FISCAL ANALYSIS

#### Assumptions:

#### **Department of Corrections**

1. If passed, this provision could result in longer terms of sentence and greater fines for those convicted.
2. The 8 year (FY 2004 – FY 2018) average number of deaths due to overdose by illegal substances is 34. The DOC assumes that the 10% of the 34 cases of overdose due to illegal substances could result in felony convictions for the person who provided the drugs with a minimum of 10 years in prison.
3. There would be approximately 3 new convictions per year starting 10/01/21. Assuming offenders would come in over the course of the fiscal year, costs are estimated to be \$87,804 in FY 2022 (3/4 year), \$234,144 in FY 2023, \$361,692 in FY 2024, and \$482,256 in FY 2025.

- If a person is convicted of a felony under this language, the cost of incarceration is \$39,022 per year per male inmate. An increase of 3% was added to the cost of incarcerating an individual for FY 2024 and FY 2025, making it \$40,190 per year per male.

**Office of Public Defender**

- The Office of the State Public Defender (OPD) has the statutory obligation to represent individuals charged with a crime who cannot afford to hire counsel. OPD also represents individuals on direct appeal and in a variety of constitutional and statutorily required civil actions. This legislation potentially increases the penalty for charges under 45-5-101 of the MCA, as such OPD anticipates an increase in costs.
- OPD has had an average of 186 distribution of dangerous drugs cases per year over the last three fiscal years.
- Of the subset of these cases who may have the additional charge related to HB 391, or 34 individuals referenced in assumption #2, if one-quarter were charged with the additional offense and were all represented by a public defender, there would be additional expenses to the OPD for 7 cases per year.
- OPD assumes each new case requires a minimum of 15 hours of attorney time for that case type. OPD also assumes the penalty imposed will increase the complexity of this case type and the 15 hours may be regularly exceeded. OPD’s current full-time employee (FTE) all-inclusive hourly rate is \$68.48, established by the FY 2019 performance audit. OPD estimates each new case charged under this legislation would cost the agency \$1,027. Minimum costs incurred would be \$5,392 in FY 2022 (3/4 year), \$7,189 in FY 2023, \$7,297 in FY 2024, and \$7,406 in FY 2025. Factors that could increase this cost are cases that exceed 15 hours and if there are additional cases above those estimated in this fiscal note. A 1.5% per year inflation factor has been added for the 2025 biennium.

	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
<b><u>Fiscal Impact:</u></b>				
<b><u>Expenditures:</u></b>				
Operating Expenses	\$93,196	\$241,333	\$368,989	\$489,662
<b>TOTAL Expenditures</b>	<u>\$93,196</u>	<u>\$241,333</u>	<u>\$368,989</u>	<u>\$489,662</u>
<b><u>Funding of Expenditures:</u></b>				
General Fund (01)	\$93,196	\$241,333	\$368,989	\$489,662
<b>TOTAL Funding of Exp.</b>	<u>\$93,196</u>	<u>\$241,333</u>	<u>\$368,989</u>	<u>\$489,662</u>
<b><u>Revenues:</u></b>				
General Fund (01)	\$0	\$0	\$0	\$0
<b>TOTAL Revenues</b>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>				
General Fund (01)	(\$93,196)	(\$241,333)	(\$368,989)	(\$489,662)

**Long-Term Impacts:**

- It is likely the incarceration rates would start to drop off after 5 years, which would be FY 2027.

**NOT SIGNED BY SPONSOR**

\_\_\_\_\_ 2/24/21 \_\_\_\_\_ KA \_\_\_\_\_ 2/23/21  
 Sponsor's Initials Date Budget Director's Initials Date