



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 Amended in House Committee

- 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> |
|---|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Expenditures: | | | | |
| General Fund | \$5,392 * | \$7,189 * | \$7,297 * | \$7,406 * |
| Revenue: | | | | |
| General Fund | \$0 | \$0 | \$0 | \$0 |
| Net Impact-General Fund Balance: | <u>(\$5,392) *</u> | <u>(\$7,189) *</u> | <u>(\$7,297) *</u> | <u>(\$7,406) *</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 more than 100 years and may be fined not more than \$100,000”. The Office of Public Defender would have increased case load costs. * HB 391 could have a potential impact on the Department of Corrections (DOC) if there are any cases which could be prosecuted due to the changes proposed in this bill but is unable to determine the fiscal impact of these cases.

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 amended bill language no longer imposes a mandatory minimum sentence for Criminal Distribution of Dangerous Drugs but could have a potential impact on the Department of Corrections (DOC) if there are any cases which could be prosecuted due to the changes proposed in this bill. The Department is unable to determine the fiscal impact of these cases as it cannot predict how the courts will impose sentences and for what length. The department cannot predict how the Board of Pardons & Parole will handle these cases.

- 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% would be 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.
- 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> |
|---|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| <u>Fiscal Impact:</u> | | | | |
| <u>Expenditures:</u> | | | | |
| Operating Expenses | \$5,392 | \$7,189 | \$7,297 | \$7,406 |
| TOTAL Expenditures | <u>\$5,392</u> | <u>\$7,189</u> | <u>\$7,297</u> | <u>\$7,406</u> |
| <u>Funding of Expenditures:</u> | | | | |
| General Fund (01) | \$5,392 | \$7,189 | \$7,297 | \$7,406 |
| TOTAL Funding of Exp. | <u>\$5,392</u> | <u>\$7,189</u> | <u>\$7,297</u> | <u>\$7,406</u> |
| <u>Revenues:</u> | | | | |
| General Fund (01) | \$0 | \$0 | \$0 | \$0 |
| TOTAL Revenues | <u>\$0</u> | <u>\$0</u> | <u>\$0</u> | <u>\$0</u> |
| <u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u> | | | | |
| General Fund (01) | (\$5,392) | (\$7,189) | (\$7,297) | (\$7,406) |

Jan J. Long
Sponsor's Initials

3/4/2021
Date

KA
Budget Director's Initials

3/3/21
Date