



August 24, 2021

Hon. Steve Barnett
Secretary of State
500 E Capitol Avenue
Pierre, SD 57501

RECEIVED

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S.D. SEC. OF STATE

Dear Secretary Barnett,

The Legislative Research Council received an initiated measure to change the penalty for unauthorized possession of a controlled substance under SDCL 22-4-5. The initiated measure requires a fiscal note because it was determined it may have an impact on revenues, expenditures, or fiscal liability of the state or its agencies and subdivisions. SDCL 2-9-31 requires the fiscal note be no longer than fifty words.

The fiscal note examines the fiscal impacts associated with reducing the penalty for unauthorized possession of a controlled substance. The initiated measure amends SDCL 22-4-5 to say a violation of this section would no longer be a Class 5 felony for substances in Schedules I and II or Class 6 felony for substances in Schedules III and IV, but instead a Class 1 misdemeanor for all controlled substances.

The average amount of individuals in prison on average every day for possession of a controlled substance as their primary offense is 522.0 based on convictions data from 2019. The data from 2020 and 2021 were not included due to the effect of the COVID-19 pandemic on South Dakota courts and prisons. Admissions to prison include all types. It is not known at this time how convictions and sentences due to violations of SDCL 22-4-5 will change after the COVID-19 pandemic, but for the purposes of this fiscal note, it is assumed convictions and sentences would return to 2019 levels indefinitely.

According to SDCL 22-6-2, the maximum penalty for a Class 1 misdemeanor is one year imprisonment in a county jail, so no one convicted of this crime could be imprisoned in a state prison if this initiated measure were to pass. Accordingly, any savings to the State are expected to lead to higher costs for counties as more violators are sent to jails instead of prisons. Fines collected from SDCL 22-4-5 are assumed to be minimal, even after the initiated measure were to pass, and court costs are assumed to stay the same. They are not factored into the analysis.

The Department of Corrections (DOC) classifies those who are convicted of a Class 5 or 6 felony to be minimum risk. DOC projects holding minimum-risk prisoners will cost \$49.95 per day in fiscal year 2022. This cost is expected to inflate every year after, but the calculations done here are intended to provide the minimum amount of savings expected.

Thus, based on the 522.0 individuals on average who would no longer be in prison every day for violating SDCL 22-4-5, the State can expect to save at least **\$9.5 million** every year on an ongoing basis once everyone convicted under this statute completes their sentences. Since the average length of stay for those convicted under SDCL 22-4-5 as their primary offense is 316.7 days, the State can expect to see the full amount of savings per year within one year after this initiated measure would pass.

Enclosed is a copy of the initiated measure, in final form, that was submitted to this office. In accordance with SDCL 2-9-31, I hereby submit the Legislative Research Council's fiscal note with respect to this initiated measure.

Sincerely,

A handwritten signature in cursive script that reads "Reed Holwegner".

Reed Holwegner
Director

Enclosures

Cc: Payton Behrend

SOUTH DAKOTA LEGISLATIVE RESEARCH COUNCIL

FISCAL NOTE

INITIATED MEASURE

**AN INITIATED MEASURE CHANGING THE PENALTY FOR UNAUTHORIZED
POSSESSION OF A CONTROLLED SUBSTANCE.**

Reducing the penalty for unauthorized possession of a controlled substance to a Class 1 misdemeanor would, after one year, save the State at least \$9.5 million per year on an ongoing basis. Costs are expected to increase for counties as those convicted are jailed instead.

Approved:

Reed Holwegner

Date:

August 24, 2021

Reed Holwegner, Director
Legislative Research Council