

PRISON/JAIL POPULATION COST ESTIMATE STATEMENT
NINETY-THIRD SESSION
LEGISLATIVE ASSEMBLY 2018

SENATE BILL NO. 95

**AN ACT TO REVISE CERTAIN PROVISIONS REGARDING INGESTION OF CERTAIN
CONTROLLED SUBSTANCES.**

A prison/jail population cost estimate statement has been requested on SB95 because it reduces the penalty for ingestion of a controlled substance, as prohibited in SDCL 22-42-5.1, from a Class 5 felony for Schedule I or II substances and a Class 6 felony for Schedule III or IV substances to a Class 1 misdemeanor.

In the past 5 years, there have been 2,340 prison convictions and 795 jail convictions for ingestion of a Schedule I or II controlled substance, resulting in an average of 468 prison convictions and 159 jail convictions per year. During that same time, there have been 48 prison convictions and 20 jail convictions for ingestion of a Schedule III or IV controlled substance, resulting in an average of 9.6 prison convictions and 4 jail convictions per year.

Those convicted under SB95 would have had a Class 5 or a Class 6 felony under the existing statute. To determine the effect on prison or jail populations, the Legislative Research Council looked at the cost difference between a Class 5 felony and a Class 1 misdemeanor, and a Class 6 felony and a Class 1 misdemeanor. Currently, persons convicted of nonviolent Class 5 or Class 6 felonies are eligible for parole after serving at least 25% of their sentence, depending on criminal history. Due to the nature of parole, it is impossible for the Legislative Research Council to know when parole may be granted. Therefore, we will be working under the assumption that those convicted will be released at first eligibility to establish minimum standards.

The following table provides our analysis of the impact of SB95 on the number of days served in prison and jail:

	Current Avg Sentence (Days)	Current Parole (Days)	SB 95 Avg Sentence (Days)	SB 95 Parole (Days)	Difference in Days
Schedule I or II (Prison)	1,017	254	13*		(254)
Schedule I or II (Jail)	118		13		(105)
Schedule III or IV (Prison)	758	189	13*		(189)
Schedule III or IV (Jail)	190		13		(177)

* Those currently sentenced to prison would be sentenced to this many days in jail under SB 95.

Given the impact of SB95 on the number of days those convicted will spend in prison or jail, and given the number of convictions for each type of crime, the following table is our estimate of the prison and jail costs associated with SB95:

	Schedule I or II (Prison)		Schedule I or II (Jail)		Schedule III or IV (Prison)		Schedule III or IV (Jail)	
	Convictions	Cost Impact	Convictions	Cost Impact	Convictions	Cost Impact	Convictions	Cost Impact
Cost/day		\$42.23		\$89.73		\$42.23		\$89.73
Year 1	468	(\$5,026,882)	159	(\$957,832)	9.6	(\$76,784)	4	(\$52,402)
Year 2	468	(\$5,026,882)	159	(\$957,832)	9.6	(\$76,784)	4	(\$52,402)
Year 3	468	(\$5,026,882)	159	(\$957,832)	9.6	(\$76,784)	4	(\$52,402)
Year 4	468	(\$5,026,882)	159	(\$957,832)	9.6	(\$76,784)	4	(\$52,402)
Year 5	468	(\$5,026,882)	159	(\$957,832)	9.6	(\$76,784)	4	(\$52,402)
Year 6	468	(\$5,026,882)	159	(\$957,832)	9.6	(\$76,784)	4	(\$52,402)
Year 7	468	(\$5,026,882)	159	(\$957,832)	9.6	(\$76,784)	4	(\$52,402)
Year 8	468	(\$5,026,882)	159	(\$957,832)	9.6	(\$76,784)	4	(\$52,402)
Year 9	468	(\$5,026,882)	159	(\$957,832)	9.6	(\$76,784)	4	(\$52,402)
Year 10	468	(\$5,026,882)	159	(\$957,832)	9.6	(\$76,784)	4	(\$52,402)
10-year Total:		(\$50,268,818)		(\$9,578,319)		(\$767,843)		(\$524,023)

In conclusion, the total average cost decreases for prison would be \$5,103,666 annually and \$51,036,661 over a ten year period. The total average cost decreases for jail would be \$1,010,234 annually and \$10,102,342 over a ten year period.

Approved: /s/ Jason Hancock Date: 1/31/2018
 Director, Legislative Research Council