

**FINAL
FISCAL NOTE**

Drafting Number: LLS 09-0518
Prime Sponsor(s): Rep. Waller
 Sen. Kopp

Date: June 17, 2009
Bill Status: Signed into Law
Fiscal Analyst: Marc Carey (303-866-4102)

TITLE: CONCERNING THE DESIGNATION OF N-BENZYLPIPERAZINE AS A SCHEDULE I CONTROLLED SUBSTANCE.

Fiscal Impact Summary	FY 2009-2010	FY 2010-2011
State Revenue		
Cash Funds - Fines Collection Cash Fund	< \$5,000	< \$5,000
State Transfers or Diversions		
Transfer from the General Fund to the Capital Construction Fund	(\$117,603)	\$0
State Expenditures		
General Fund	\$0	\$28,461
Cash Funds		
Capital Construction appropriation to the Corrections Expansion Reserve Fund	117,603	0
FTE Position Change	0.0 FTE	0.0 FTE
Effective Date: The bill was signed into law by the Governor on June 1, 2009. The bill becomes effective on July 1, 2009, and applies to offenses that occur on or after that date.		
Appropriation Summary for FY 2009-2010: See State Appropriations section.		
Local Government Impact: None.		

Summary of Legislation

Beginning in FY 2009-10, this bill makes any material compound or mixture containing the stimulant N-benzylpiperazine (BZP) a schedule I controlled substance. Possession of less than an ounce of a schedule I controlled substance is punishable as a Class 6 felony (F6), while possession of over an ounce is punishable as a Class 4 felony (F4).

State Revenue

Fine Revenue. A person convicted of a Class 6 felony may be subject to a fine ranging from \$1,000 to \$100,000. Fine revenue is deposited into the Fines Collection Cash Fund, which is administered by the Judicial Branch. Fines are imposed at the discretion of the court, but can be difficult to collect. Given the relatively small number of offenders who are expected to be convicted of this crime, the fiscal note anticipates less than \$5,000 in fine revenue per year.

Transfers or Diversions

Pursuant to the requirements of Section 2-2-703, C.R.S., and Section 17-1-116, C.R.S., this bill requires a transfer of \$117,603 from the General Fund to the Capital Construction Fund in FY 2009-10, then an appropriation of the money to the Corrections Expansion Reserve Fund. Thus, this amount will not be available for General Fund appropriations. For a further explanation of this transfer and appropriation, see the section related to the five-year impact on correctional facilities.

Based on the March 2009 Legislative Council Staff revenue forecast, revenue collections for FY 2009-10 will be insufficient to fully fund the 6 percent limit. Therefore, the increased funding required by this bill will further reduce the amount of money available for General Fund appropriations in the state's operating budget. For FY 2009-10, this amount is \$117,603.

State Expenditures

Department of Corrections (DOC). The bill will create additional expenditures for the DOC, estimated at \$117,603 in FY 2009-10. The five-year expenditure impact is estimated at \$146,064.

This bill makes BZP a Schedule 1 controlled substance, punishable at the F6 level. BZP is a drug typically used in conjunction with other drugs (such as ecstasy) that are already Schedule 1 controlled substances. Thus, this fiscal note assumes only 1 offender every 5 years will be charged and incarcerated for possession of BZP. The expected length of stay of this inmate is 12.4 months.

Five-Year Fiscal Impact on Correctional Facilities

Section 2-2-703, C.R.S., specifies that no bill can be passed by the General Assembly which results in a net increase in periods of imprisonment in state correctional facilities unless it contains an appropriation *sufficient to cover the increased capital construction and operating costs which result from the bill* in each of the first 5 fiscal years following its passage. Sections 17-1-102, 104.9, and 105.5, C.R.S., authorize the department to permanently place inmates classified as medium custody and below in private contract prisons. Inmates classified higher than medium custody cannot be placed in private contract prisons, except under "correctional emergency" conditions.

Currently, a significant number of state inmates are incarcerated in private prisons. Table 1 presents information on the share of inmates incarcerated in state facilities and private prisons as of October 2008, by felony class, according to Department of Correction's data.

Felony Class	Percent in State Facilities	Percent in Private Prisons
Class 1	96%	4%
Class 2	80%	20%
Class 3	75%	25%
Class 4	76%	24%
Class 5	76%	24%
Class 6	78%	22%

This fiscal note assumes that the new inmates resulting from passage of this bill, on average, will be allocated between state correctional facilities and private contract prisons according to historical patterns. Accordingly, legislative council staff has determined that the fiscal note should reflect a prorated share of capital construction and operating costs since, on average, this amount is sufficient to cover the increased capital construction and operating costs resulting from the bill.

For inmates placed in state correctional facilities, capital construction costs are estimated to be \$150,773 per inmate bed. Operating costs are \$83.25 per bed per day or \$30,386 per bed per year. These construction costs reflect the funding needed to construct inmate beds in the fiscal year prior to when additional offenders are expected to enter the system. This lag accounts for the estimated time for criminal filing, trial, disposition, and sentencing. The state incurs no capital construction costs for inmates housed in private contract prisons, and pays these prisons \$59.28 per bed per day to cover operating costs. The total cost to the department is therefore \$21,637 per private prison bed per year. *Because 22 percent of F6 inmates are housed in private prisons, both the capital and operating costs presented in Table 2 have been prorated accordingly.*

Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2009-10	0.0	\$117,603	\$0	\$117,603
FY 2010-11	1.0	\$0	\$28,461	\$28,461
FY 2011-12	0.0	\$0	\$0	\$0
FY 2012-13	0.0	\$0	\$0	\$0
FY 2013-14	0.0	\$0	\$0	\$0
Total		\$117,603	\$28,461	\$146,064

State Appropriations

For FY 2009-10, the Department of Corrections will require a \$117,603 General Fund transfer to the Capital Construction Fund and an appropriation of the same amount to the Corrections Expansion Reserve Fund. The bill also requires five-year appropriations to cover capital construction and operating costs in the Department of Corrections as identified in Table 1.

However, this bill specifies that, because the General Assembly finds that enactment of this bill will result in the minor fiscal impact of one additional offender being convicted and sentenced to the Department of Corrections during the next five years, an exception may be made to the five-year appropriation requirements specified in Section 2-2-703, C.R.S. Thus the bill contains no appropriation.

Departments Contacted

Corrections

Judicial

Public Safety