

**STATE and LOCAL
FISCAL IMPACT**

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| Drafting Number: LLS 14-0218 | Date: January 30, 2014 |
| Prime Sponsor(s): Rep. Landgraf Sen. Baumgardner | Bill Status: House Judiciary Fiscal Analyst: Kerry White (303-866-3469) |

SHORT TITLE: ENFORCING LAWS AGAINST DESIGNER DRUGS

| Fiscal Impact Summary* | FY 2014-2015 | FY 2015-2016 |
|---|------------------------------|----------------------------------|
| State Revenue | <u>up to \$10,000</u> | <u>up to \$10,000</u> |
| General Fund | up to \$5,000 | up to \$5,000 |
| Cash Funds | up to \$5,000 | up to \$5,000 |
| State Expenditures | <u>\$821,555</u> | <u>at least \$477,377</u> |
| General Fund | 795,744 | at least 435,990 |
| Centrally Appropriated Costs** | 25,811 | 41,387 |
| FTE Position Change | 3.0 FTE | 4.0 FTE |
| Appropriation Required: Multiple agencies. \$795,744 - Department of Public Safety (FY 2014-15); \$85,936 - Department of Corrections (FY 2014-15 through FY 2018-19). | | |

* This summary shows changes from current law under the bill for each fiscal year.

** These costs are not included in the bill's appropriation. See the State Expenditures section for more information.

Summary of Legislation

This bill prohibits the distribution, dispensing, manufacturing, or sales of any product labeled as incense or any other trademark if the product contains synthetic cannabinoids. It establishes civil penalties of between \$10,000 and \$500,000 for violations (deceptive trade practices). Penalties increase to between \$25,000 and \$500,000 for persons who sell or distribute these products to a minor who is at least two years younger than the violator. Persons subject to civil penalties remain subject to any criminal penalties.

On or before September 1, 2014, the Colorado Bureau of Investigation (CBI) in the Department of Public Safety (DPS) is required to establish a division to address the laws prohibiting sales and distribution of synthetic cannabinoids, cathinones, and other designer drugs. The CBI is directed to purchase at least ten field test kits and make them available to local law enforcement agencies. The bill also tolls the statute of limitations for crimes related to synthetic and other designer drugs while law enforcement awaits results of laboratory analyses.

Background

Under current law, distributing, manufacturing and possessing synthetic and other designer drugs are criminal offenses. In the past year, there were about 1,267 total law enforcement contacts for distribution and possession of synthetic cannabinoids. Of this amount, 50 were charged as distributors or manufacturers and 244 were charged for possession. House Bill 12-1310 (which incorporated the language of Senate Bill 12-116) established similar penalties for

possession and distribution of cathinones (often referred to as bath salts). There have been no civil penalties or convictions identified for cathinone offenses in the past year, although it is possible some cases are prosecuted with other offenses.

State Revenue

Beginning in FY 2014-15, this bill may increase state revenue by up to \$10,000 per year from fines for deceptive trade practices and criminal offenses.

Deceptive trade practices. This bill allows for civil penalties of between \$10,000 and \$500,000 for distributing, dispensing, or selling any product with synthetic or designer drugs. These fines are credited to the General Fund. Because there are no known examples of fines for deceptive trade practices involving cathinones or other similar drugs, it is not possible to determine the impact of including synthetic cannabinoids as deceptive trade practices. The fiscal note assumes any such increase in revenue will be minimal.

Criminal offenses. To the extent that increased field testing of suspected illicit substances leads to an increase in the number of convictions for criminal offenses, state revenue may increase. Beginning in FY 2014-15, this bill is anticipated to increase state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Branch. The fine penalties are \$50 to \$750 for a level 2 drug misdemeanor, \$2,000 to \$500,000 for a level 3 drug felony, and \$3,000 to \$750,000 for a level 2 drug felony. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to state revenue cannot be determined.

State Expenditures

This bill will increase state expenditures by at least \$821,555 and 3.0 FTE in FY 2014-15 and at least \$477,377 and 4.0 FTE in FY 2015-16 and future years. Identified costs are in the DPS and the Department of Corrections (DOC). The bill may also increase costs and workload for the Judicial Department. Table 1 and the discussion that follows describe the costs of the bill.

| Table 1. DPS Expenditures Under HB14-1037 | | |
|--|-------------------|-------------------|
| Cost Components | FY 2014-15 | FY 2015-16 |
| Personal Services | \$229,082 | \$298,226 |
| FTE | 3.0 | 4.0 |
| Operating Expenses and Capital Outlay Costs | 21,662 | 3,800 |
| Vehicle Lease | 50,800 | 30,480 |
| Equipment and Equipment Maintenance | 456,700 | 64,500 |
| Training | 22,500 | 2,500 |
| Supplies | 15,000 | 15,000 |
| Centrally Appropriated Costs* | 25,811 | 41,387 |
| TOTAL | \$821,555 | \$455,893 |

* Centrally appropriated costs are not included in the bill's appropriation.

Assumptions. Costs are based on the following assumptions:

- ten field kits will be purchased and made available to local government agencies;
- the CBI will perform analyses on approximately 420 additional samples per year;
- staff to conduct analyses on samples will be hired on September 1, 2014;
- vehicles will be required in order to facilitate field testing; and
- due to the length of time required to obtain a state vehicle, vehicles will be leased between September 2014 and December 2015.

Department of Public Safety. Costs for the CBI include 4.0 FTE to support field testing of suspected designer drugs and analyze the samples collected. Costs are based on a supervising criminal investigator drug chemist and three investigators and are prorated in the first year to accommodate the delayed hiring date and General Fund paydate shift. Standard operating and capital outlay costs for each FTE are included.

Equipment costs are one-time and include ten field test units at \$25,000 each, \$100,000 for a gas chromatography spectrometer, \$80,000 for a Fourier transform infrared spectrometer, and \$26,700 for investigator equipment (radios, weapon, and armor). Equipment maintenance costs begin in FY 2015-16 and are \$64,500 per year. Training costs assume annual training of \$2,500 for the drug chemist and one-time costs of \$20,000 for training of the investigators. Laboratory analysis supplies are \$15,000 per year. Vehicle lease costs assume costs of \$5,080 per month from September 2014 through December 2015. The fiscal note assumes that the department will request permanent state vehicles through the annual budget process, which will be centrally appropriated as of January 2016.

Judicial Department. Workload could increase in courts as a result of any civil actions for deceptive trade practices. Based on similar laws for cathinones, the fiscal note assumes any such filings will be minimal. Workload for trial courts, the Office of the State Public Defender, and the Office of the Alternate Defense Counsel may also increase if the field testing kits lead to more arrests and prosecutions for possession of designer drugs. The fiscal note assumes that any increases in workload due to prosecutions for criminal offenses can be accomplished without an increase in state appropriations.

Department of Corrections. To the extent that field testing results in more persons convicted of distributing or possessing designer drugs and sentenced to prison, costs for the DOC. In addition to any fines, the penalty for a level 2 drug felony is four to eight years; and the penalty for a level 3 drug felony is two to four years. The fiscal note assumes at least one additional offender will be convicted of a class 3 felony every five years. This results in an increase of at least \$85,936 for the DOC between FY 2014-15 and FY 2018-19.

Current law prohibits the General Assembly from passing any bill to increase periods of imprisonment in state correctional facilities without appropriating an amount sufficient to cover the increased capital construction and operating costs of the bill in each of the first five fiscal years. However, current law also allows the DOC to place offenders classified as medium custody and below in private contract prisons, for which no state capital construction costs are incurred.

Offenders sentenced under this bill to DOC may be placed in either a state-run or a private contract prison, depending on several factors. Any offenders that *must* be housed in a state-run prison will likely require a shift of other inmates in that facility to private contract prisons. Therefore, this fiscal note assumes that the impact of this bill will be accommodated through the use of private contract prisons, and that no new capital construction funds are necessary.

Offenders placed in a private contract prison cost the state about \$58.86 per offender per day, including the current daily rate of \$53.74 and an estimated \$5.12 per offender per day for medical care provided by the DOC. No impact is expected in the first year because of the estimated time for criminal filing, trial, disposition, and sentencing. Table 2 shows the estimated cost of the bill over the next five fiscal years.

| Table 2. Five-Year Fiscal Impact On Correctional Facilities | | | | |
|--|--------------------------|--------------------------|-----------------------|-------------------|
| Fiscal Year | Inmate Bed Impact | Construction Cost | Operating Cost | Total Cost |
| FY 2014-15 | 0.0 | \$0 | \$0 | \$0 |
| FY 2015-16 | 1.0 | \$0 | \$21,484 | \$21,484 |
| FY 2016-17 | 1.0 | \$0 | \$21,484 | \$21,484 |
| FY 2017-18 | 1.0 | \$0 | \$21,484 | \$21,484 |
| FY 2018-19 | 1.0 | \$0 | \$21,484 | \$21,484 |
| Total | | | \$85,936 | \$85,936 |

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 3.

| Table 3. Centrally Appropriated Costs Under HB14-1037* | | |
|--|-------------------|-------------------|
| Cost Components | FY 2014-15 | FY 2015-16 |
| Employee Insurance (Health, Life, Dental, and Short-term Disability) | \$10,278 | \$18,272 |
| Supplemental Employee Retirement Payments | 15,533 | 23,115 |
| TOTAL | \$25,811 | \$41,387 |

*More information is available at: <http://colorado.gov/fiscalnotes>

Local Government Impact

This bill could affect local governments in two ways. First, it could reduce the length of time spent on investigation of drug cases by having field test kits available. Second, it could increase costs as a result of prosecutions resulting from improved access to field testing kits. The penalty for a level 2 drug misdemeanor/offense is 0 to 12 months in a county jail, a fine of \$50 to \$750, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails at a daily rate of \$51.45 to house state inmates. It is assumed that the impact of this bill will be minimal.

Effective Date

The bill takes effect August 6, 2014, if the General Assembly adjourns on May 7, 2014, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2014-15, the bill requires an appropriation of \$795,744 General Fund and an allocation of 3.0 FTE to the Department of Public Safety. The Department of Corrections requires the five-year appropriations shown in Table 2.

State and Local Government Contacts

Corrections
Judicial

Counties
Municipalities

District Attorneys
Public Safety

Human Services
Sheriffs