

Colorado Legislative Council Staff Fiscal Note

**FINAL
FISCAL NOTE**

Drafting Number: LLS 15-0172	Date: August 4, 2015
Prime Sponsor(s): Rep. Foote; Willett	Bill Status: Signed into Law
Sen. Grantham; Johnston	Fiscal Analyst: Kerry White (303-866-3469)

BILL TOPIC: UNLAWFUL MANUFACTURE MARIJUANA CONCENTRATE

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue		
Cash Funds	<\$5,000	<\$5,000
State Expenditures		
General Fund		\$22,068
TABOR Set-Aside	<\$5,000	<\$5,000
FTE Position Change		
Appropriation Required: \$55,170 - Department of Corrections (FY 2015-16 through FY 2019-20).		

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

Summary of Legislation

This bill makes it a level 2 drug felony for an unlicensed person to manufacture marijuana concentrate or permit its manufacture using an inherently hazardous substance. The bill defines an "inherently hazardous substance" as a liquid chemical, compressed gas, or commercial product that has a flash point at or lower than 38 degrees Celsius or 100 degrees Fahrenheit, including butane, propane, and diethyl ether, and excluding all forms of alcohol and ethanol.

Background

According to data collected by the Rocky Mountain High Intensity Drug Trafficking Areas (HIDTA) in 2014, there were 32 explosions and 30 injuries related to the manufacture of marijuana concentrate. It is unknown how many of these cases included a criminal prosecution for a portion of this conduct, such as criminal mischief, menacing, or arson.

Sections 14 and 16 of Article XVIII of the Colorado constitution allow for possession and production of marijuana concentrate for medical marijuana patients and persons over the age of 21 respectively. These provisions do not specify limits concerning its production. Under current law, unlawful manufacturing of marijuana concentrate is a level 3 drug felony. However, because of the perceived ambiguity around current law and the constitutional language and other factors, no convictions have occurred as of this writing. HB15-1305 clarifies the prohibited conduct and increases the penalty for unlicensed manufacturing of marijuana concentrate to a level 2 drug felony.

State Revenue

Beginning in FY 2015-16, 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 Department. The fine penalty for a level 2 drug felony is \$3,000 to \$750,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, based on the low number of fines imposed in 2014, the fiscal note assumes that any revenue generated is likely to be less than \$5,000.

TABOR Impact

This bill may increase state revenue from criminal fines, which will increase the amount required to be refunded under TABOR. TABOR refunds are paid from the General Fund.

State Expenditures

Beginning in FY 2015-16, this bill will increase workload and costs for Judicial Department agencies, including trial courts and the Office of the State Public Defender, or the Office of the Alternate Defense Counsel, to hear any new cases. The fiscal note assumes that the increase in workload is minimal and will not require an increase in appropriations for any of these agencies because it is likely that the conduct that is prohibited by HB15-1305 will accompany other charges, such as property damage, explosions, fires, and injuries that are currently subject to prosecution. However, the fiscal note assumes that at least one person every five years will be sentenced to the Department of Corrections for unlawfully manufacturing marijuana concentrate or be given a consecutive sentence to another charge, such as arson or criminal mischief.

Five-Year Fiscal Impact on Correctional Facilities

This bill is anticipated to increase state General Fund expenditures by an estimated \$55,170 between FY 2015-16 and FY 2019-20 for the Department of Corrections (DOC). This increase assumes at least one offender will be sentenced to prison for a level 2 drug felony every five years and have an average length of stay of 30.0 months. Should additional convictions occur, the fiscal note assumes the Department of Corrections will request additional appropriations through the annual budget process.

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 \$60.46 per offender per day, including the current daily rate of \$55.08 and an estimated \$5.38 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 1 shows the estimated cost of the bill over the next five fiscal years.

Table 1. Five-Year Fiscal Impact On Correctional Facilities				
Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2015-16	0.0	\$0	\$0	\$0
FY 2016-17	1.0	\$0	\$22,068	\$22,068
FY 2017-18	1.0	\$0	\$22,068	\$22,068
FY 2018-19	0.5	\$0	\$11,034	\$11,034
FY 2019-20	0.0	\$0	\$0	\$0
Total				\$55,170

Local Government Impact

This bill will increase workload and costs for district attorneys that investigate and prosecute offenses under the bill. The fiscal note assumes that these increases will be minimal.

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. As described above, depending on the context of the crime, an offender who is prosecuted for unlawfully manufacturing marijuana concentrate could be charged with a variety of offenses including arson, criminal mischief, and menacing, among others. No convictions under the current level 3 drug felony prohibition have occurred. For this reason, no information about the gender or minority status of offenders are available.

Effective Date

The bill was signed into law by the Governor on May 29, 2015, and applies to offenses committed on or after July 1, 2015.

State Appropriations

The bill includes the five-year General Fund appropriations for the Department of Corrections shown in Table 1.

State and Local Government Contacts

Corrections
Judicial
Public Safety

Counties
Municipalities
Revenue

District Attorneys
Public Health and Environment