



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number:	LLS 22-0883	Date:	August 15, 2022
Prime Sponsors:	Rep. Garnett; Lynch Sen. Pettersen; Cooke	Bill Status:	Signed into Law
		Fiscal Analyst:	Matt Bishop 303-866-4796 Erin Reynolds 303-866-4146

Bill Topic: FENTANYL ACCOUNTABILITY AND PREVENTION

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
	<input checked="" type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill creates programs for fentanyl use prevention, education, and treatment and updates fentanyl-related offenses. It increases state and local revenue and expenditures beginning in FY 2022-23, and creates one-time state transfers in FY 2022-23.

Appropriation Summary: For FY 2022-23, the bill includes appropriations of \$54.6 million to multiple state agencies.

Fiscal Note Status: The iscal note reflects the enacted bill.

Table 1
State Fiscal Impacts Under HB 22-1326

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue		-	-
Expenditures	General Fund	\$21,026,867	\$3,038,967
	Cash Funds	\$17,283,889	\$13,852,630
	Centrally Appropriated	\$211,573	\$235,030
	Total Expenditures	\$38,522,329	\$17,126,627
	Total FTE	11.5 FTE	12.7 FTE
Transfers¹	Behavioral and Mental Health Cash Fund	(\$25,700,000)	-
	Opiate Antagonist Bulk Purchase Fund	\$19,700,000	-
	Harm Reduction Grant Program Cash Fund	\$6,000,000	-
	Net Transfer	\$0	-
Other Budget Impacts	General Fund Reserve	\$3,154,030	\$455,845

¹ Money in the Behavioral and Mental Health Cash Fund comes from federal ARPA funds. These transfers are made as an appropriation of funds, and expenditure amounts show spending of these funds over one to two fiscal years.

Summary of Legislation

The bill modifies fentanyl-related criminal offenses, updates practices around dispensing opiate antagonists, creates an education campaign, broadens the scope of the Harm Reduction Grant Program, and makes requirements for continuity of care for individuals in the criminal justice system with substance use disorder. These provisions are described in more detail below.

Fentanyl-related offenses. The bill updates existing fentanyl-related offenses by specifying the amounts of any substance containing any amount of fentanyl, carfentinil, benzimidazole opioids, or an analog thereof that are unlawful to possess, distribute, manufacture, sell, or possess.

Under the bill, unlawful distribution (as well as manufacturing, dispensing, or sale of a material, compound, mixture, or preparation containing fentanyl, carfentinil, or an analog thereof) is:

- a level 1 drug felony if it weighs more than 50 grams; subject to aggravated range penalties if resulting in death;
- a level 2 drug felony if it weighs more than 4 grams, but not more than 50 grams; and
- a level 3 drug felony if it weighs not more than 4 grams.

Beginning July 1, 2022, drug misdemeanor possession offenses escalate to a level 4 drug felony for amounts between one and four grams where the drug contains fentanyl, unless the person establishes with evidence that they made a reasonable mistake and did not know the drug contained fentanyl. Defendants convicted of this sentence are not subject to Department of Corrections (DOC) jurisdiction, only to sentences to probation, county jail, alternative sentencing, or Community Corrections, as well as subject to fines. Additionally, a person convicted of felony possession conviction under the bill may have their felony vacated and entered as a misdemeanor after successful completion of their sentence, and is not subject to the habitual offender statute.

In a possession charge where the drug contains more than 60 percent fentanyl, the offense is a level 2 drug felony, with this provision effective upon the Colorado Bureau of Investigation's notice that it has testing capacity. Lower level offenses escalate to a level 1 drug felony if a person dies as a proximate cause of using the fentanyl, the drug originated outside Colorado, or the offender also possesses pill or tablet manufacturing equipment.

Current law grants immunity for certain individuals who report an emergency drug overdose. The bill extends this exemption to individuals whose provision of fentanyl is a proximate cause for death. For three years, beginning July 1, 2022, law enforcement agencies and district attorney offices must report on these instances.

Any person convicted for a fentanyl-related offense must undergo a substance abuse assessment, which may require community-based treatment, residential treatment, or non-residential treatment, and the completion of a fentanyl education program developed by the Department of Human Services (CDHS). Individuals represented by court-appointed counsel are not required to pay the costs of a treatment program ordered as a condition of probation or the education requirement. Costs for these programs will be paid from the Correctional Treatment Cash Fund.

Criminal diversion and withdrawal management and crisis services programs. The bill requires a General Fund appropriation of \$10 million to withdrawal management and crisis services programs in CDHS for FY 2022-23.

Disbursement of opiate antagonists. Current law specifies the individuals to whom a prescriber may prescribe or dispense an opiate antagonist, and additional individuals or entities who may possess, furnish, or administer an opiate antagonist. The bill consolidates these lists and broadens the types of individuals who may be prescribed or dispensed opiate antagonists, may furnish opiate antagonists to others, are encouraged to educate employees and volunteers on the use of an opiate antagonist, and are immune from civil damages when administering an opiate antagonist in good faith.

The bill appropriates \$20 million from the Behavioral and Mental Health Cash Fund to the Opiate Antagonist Bulk Purchase Fund, which is continuously appropriated to the Department of Public Health and Environment (CDPHE) for the bulk purchase and distribution of opiate antagonists. The bill also appropriates \$300,000 General Fund to CDPHE for the purchase and distribution of non-laboratory synthetic opiate detection tests in FY 2022-23.

The bill requires the state's Medicaid program to reimburse hospitals and emergency departments for the cost of opiate antagonists under certain circumstances, and directs the Department of Health Care Policy and Financing (HCPF) to seek federal financial participation for these costs.

Education, trainings, and grants. CDPHE must develop, implement, and maintain an ongoing, statewide fentanyl prevention and education campaign to inform the public about its dangers, prevention, treatment, and laws. The department must also conduct at least five regional training sessions during FY 2022-23 for community partners to implement youth health development strategies, and it must maintain a website of educational materials.

The bill modifies the Harm Reduction Grant Program in CDPHE to broaden the list of entities eligible for grants, broaden the program's scope, and it appropriates \$6 million from the Behavioral and Mental Health Cash Fund to the Harm Reduction Grant Program Cash Fund.

The bill creates the Synthetic Opiate Poisoning Investigation and Distribution Interdiction Grant Program in the Department of Public Safety. Subject to available appropriations, the grant program will provide funding to law enforcement agencies.

The bill requires CDHS to train emergency departments and certified peace officers in the procedures for involuntarily committing to custody an individual who is incapacitated by substances or has a substance use disorder.

Continuity of care. Current law encourages correctional facilities to maintain the treatment of an incarcerated person's opioid use disorder. The bill requires such treatment, and requires the correctional facility to provide opiate antagonists to the person, schedule an appointment for the person with a substance use provider, and provide a referral to a treatment provider upon release from the facility.

The bill also extends the requirement to provide opiate antagonists and a referral to county jails. County jails must develop protocols for medication-assisted treatment or other withdrawal management care by July 1, 2023. The bill appropriates \$3 million to CDHS in FY 2022-23 to assist county jails with these requirements.

Starting July 1, 2023, community corrections programs in the DPS must assess participants for substance use withdrawal symptoms and to develop protocols for withdrawal management care. The bill expands the authority of the Correctional Treatment Board to address drug overdose prevention.

Studies and data collection. The bill requires the following evaluations and reporting:

- The CDPHE is required to contract with an independent entity by January 1, 2023, to study and publish a report concerning the impact and implementation of this bill. The entity must complete its report by December 31, 2024.
- The Legislative Department is required to do a post-enactment review.
- The Department of Law is required to study the use of the internet for trafficking fentanyl, other synthetic opioids, and counterfeit prescription drugs.
- The CDHS must contract with an independent entity by November 1, 2022, to conduct a study of the health effects of criminal penalties due to this bill. The entity must complete its report by December 31, 2024.
- The bill creates the Colorado Overdose Prevention Review Committee in the CDHS on July 1, 2024, to review cases of drug-related overdoses and make recommendations to the General Assembly. The committee repeals September 1, 2033, pending a sunset review.
- By July 1, 2023, the bill requires emergency medical providers, coroners, law enforcement agencies, and emergency departments to participate in the Overdose Detection Mapping Application Program in the CDPHE.

Assumptions

The bill requires specific appropriations from the Behavioral and Mental Health Cash Fund to cover many of the bill's costs, as well as from the Correctional Treatment Cash Fund. The fiscal note assumes that costs to implement the bill above these specified amounts are paid from the General Fund through FY 2023-24. From FY 2024-25 forward, General Fund will be required to cover ongoing expenses.

Comparable Crime Analysis

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 creates a new factual basis for an existing crime. The following sections outline data on crimes that are comparable to the offense in this bill and discuss assumptions on future rates of criminal convictions resulting from the bill. The bill changes the classification of several existing crimes, as discussed below.

Possession. The bill makes the unlawful possession of any material, compound, mixture, or preparation that weighs between 1 and 4 grams and contains any amount of fentanyl, carfentiniol, or an analog thereof, a level 4 drug felony. From FY 2018-19 to FY 2020-21, 10,946 individuals have been convicted and sentenced for the offense of felony possession of more than 4 grams of a schedule I or II controlled substance and 18,333 individuals have been convicted of misdemeanor possession of a controlled substance, or 29,279 in total. Of the persons convicted, 19,597 were male, 9,674 were female, and 17 did not have a gender identified. Demographically, 24,726 were White, 2,710 were Black/African American, 1,335 were Hispanic, 177 were Asian, 138 were American Indian, 192 were classified as "Other," and 10 did not have a race identified.

Distribution. Under current law, unlawful distribution of controlled substances is sentenced as follows: 250 grams or more is a level 1 drug felony; 14 grams to 250 grams is a level 2 drug felony; and 0 grams to 14 grams is a level 3 drug felony. Under the bill, unlawful distribution (as well as manufacturing, dispensing, or sale of a material, compound, mixture, or preparation containing fentanyl, carfentanyl, or an analog thereof) is a level 1 drug felony if it weighs more than 50 grams; a level 2 drug felony if it weighs more than 4 grams, but not more than 50 grams; and level 3 drug felony if it weighs not more than 4 grams. From FY 2018-19 to FY 2020-21, 2,452 individuals have been convicted and sentenced for the offenses of distribution of controlled substances. Of the persons convicted, 1,943 were male, 507 were female, and 2 did not have a gender identified. Demographically, 1,779 were White, 412 were Black/African American, 206 were Hispanic, 24 were Asian, 9 were American Indian, 15 were classified as "Other," and 7 did not have a race identified.

DOC-related assumptions. Because the bill prohibits a sentence to the DOC for the bill's level 4 drug felony fentanyl-related possession offenses, there will be no impact to the DOC from this offense. For distribution offenses, this analysis assumes that 5 percent of level 3 drug felony convictions will escalate to level 2 drug felonies under the bill, resulting in a net increase of about 32 offenders per year convicted and sentenced to custody in DOC. The average DOC length of stay for a level 2 drug felony is 26.5 months with an average parole of 14.3 months, increased from the level 3 drug felony average length of stay of 16.8 months and average parole of 9.3 months. Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Revenue

Criminal fines and court fees. By modifying existing drug felony offenses, the bill will increase state revenue from criminal fines and court fees by an indeterminate amount beginning in FY 2022-23, credited to various cash funds in the Judicial Department and the General Fund. The fine penalty is \$1,000 to \$100,000 for a level 4 drug felony, up to \$5,000 to \$1,000,000 for a level 1 drug felony. Court fees may also be imposed on a case-by-case basis for a variety of court-related costs, such as probation supervision, drug surcharges, or late fees. Because the courts have the discretion of incarceration, imposing a fine, or both, a precise state revenue impact cannot be determined. Criminal fine and court fee revenue is subject to TABOR.

Gifts, grants, and donations. The bill allows the Division of Criminal Justice to seek gifts, grants, or donations. No amount has been identified; this revenue is not subject to TABOR.

State Transfers

For FY 2022-23, the bill transfers the following amounts from the Behavioral and Mental Health Cash Funds via an appropriation to the following continuously appropriated cash funds in CDPHE:

- \$19.7 million to the Opiate Antagonist Bulk Purchase Fund; and
- \$6.0 million to the Harm Reduction Grant Program Cash Fund.

State Expenditures

The bill increases state expenditures in multiple departments by the amounts shown in Table 2 from the General Fund, the Behavioral and Mental Health Cash Fund, and the Correctional Treatment Cash Fund. The bill also increases workload for the DPS and the Legislative Department. These impacts are described below.

**Table 2
Expenditures Under HB 22-1326**

Cost Components	FY 2022-23	FY 2023-24
Department of Public Health and Environment		
Personal Services	\$276,168	\$277,952
Operating Expenses	\$5,535	\$5,400
Capital Outlay Costs	\$24,800	-
Opiate Antagonists Bulk Purchase (CF)	\$9,728,545	\$9,737,618
Harm Reduction Grants (CF)	\$2,927,365	\$2,933,414
Education Campaign	\$1,600,000	\$1,600,000
Fentanyl Tests	\$600,000	-
Regional Trainings	\$50,000	-
Website Development	\$30,000	\$5,000
Independent Study	\$300,000	-
Centrally Appropriated Costs ¹	\$74,458	\$76,542
FTE – Personal Services	4.0 FTE	4.0 FTE
CDPHE Subtotal	\$15,616,871	\$14,635,926
Department of Human Services		
Personal Services	\$301,980	\$374,863
Operating Expenses	\$6,075	\$6,750
Capital Outlay Costs	\$31,000	-
County Jails Support (CF)	\$3,000,000	-
MSO Regional Evaluation	\$700,000	-
Fentanyl Education Program (CF)	\$150,000	\$25,000
Withdrawal Management and Crisis Services	\$10,000,000	-
Health Effects Study (CF)	\$200,000	\$200,000
Review Committee Expenses	-	\$27,288
Centrally Appropriated Costs ¹	\$68,775	\$83,719
FTE – Personal Services	4.1 FTE	5.0 FTE
CDHS Subtotal	\$14,457,830	\$717,620

**Table 2
Expenditures Under HB 22-1326 (Cont.)**

Cost Components	FY 2022-23	FY 2023-24
Health Care Policy and Financing		
Hospital Reimbursements for Opiate Antagonists	\$360,000	\$360,000
HCPF Subtotal	\$360,000	\$360,000
Judicial Department		
Personal Services	\$105,747	\$115,359
Operating Expenses	\$4,415	\$4,415
Capital Outlay Costs	\$28,200	\$1,600
Treatment Costs (CF)	\$730,926	\$730,926
Centrally Appropriated Costs ¹	\$25,512	\$27,376
FTE – Personal Services	1.6 FTE	1.7 FTE
Judicial Subtotal	\$894,800	\$879,676
Department of Corrections (See Table 3 for detail)		
Prison Operating Expenditures	-	\$470,573
Parole Operating Expenditures	-	(\$120,063)
DOC Subtotal	-	\$350,510
Department of Law		
Internet Study	\$150,000	-
Law Subtotal	\$150,000	-
Department of Public Safety		
Personal Services	\$121,735	\$132,802
Operating Expenses	\$2,700	\$2,700
Capital Outlay Costs	\$12,400	-
Investigation Grant Program	\$6,863,165	-
Centrally Appropriated Costs ¹	\$42,828	\$47,393
FTE – Personal Services	1.8 FTE	2.0 FTE
DPS Subtotal	\$7,042,828	\$182,895
Total	\$38,522,329	\$17,126,627
Total FTE	11.5 FTE	12.7 FTE

* (CF) signifies that the cost will be paid from either the Behavioral and Mental Health Cash Fund or the Correctional Treatment Cash Fund.

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Public Health and Environment. Costs will increase in the CDPHE for a variety of activities. Standard operating and capital outlay costs are included for all new personnel.

- **Opiate Antagonists Bulk Purchase, Harm Reduction Grants, and Fentanyl tests.** The bill requires appropriations from the Behavioral and Mental Health Cash Fund to increase the Opiate Antagonist Bulk Purchase Program, the Harm Reduction Grant Program. The bill requires

General Fund to procure non-laboratory synthetic opiate detection tests. The estimates in Table 2 are for illustrative purposes only; actual spending will be based on demand for these services, available fund balance, and decisions made by the department. The growth of the bulk purchase program requires 1.5 FTE to update policies, evaluate additional orders, conduct outreach, and report on the program. The growth of the Harm Reduction Grant Program requires 1.0 FTE to update policies, evaluate grant applications, monitor grant awards, and compile reports.

- **Education campaign.** Based on other educational and public awareness campaigns operated by the department, the fentanyl campaign is estimated to cost \$1.6 million per year for three years. This includes working with a media agency and pursuing a variety of media outlets including television and web-based outreach. Costs also include 0.5 FTE to manage the agency contract, approve plans, and facilitate reporting.
- **Regional trainings.** Costs for the regional trainings include facility rental, developing training materials, and providing travel stipends to community partners. The trainings require 0.1 FTE in FY 2022-23 only.
- **Website development.** Workload will increase to develop, implement, and maintain a website to serve as the state resource for the most accurate and timely information regarding fentanyl.
- **Independent study.** The CDPHE requires an estimated \$300,000 to contract for the required independent study. The actual cost of the study will be determined through the procurement process.
- **Overdose mapping.** The CDPHE requires 1.0 FTE to execute data agreements and integrate data for the Overdose Detection Mapping Application Program. The CDPHE already has a mapping software license and the overdose mapping application is available at no cost.

Department of Human Services. Costs will increase in the CDHS for a variety of activities beginning in FY 2022-23. Standard operating and capital outlay costs are included for all new personnel.

- **County jail support.** The bill requires \$3.0 million to support county jails in developing protocols for medication-assisted treatment and other appropriate withdrawal management care.
- **MSO Regional Evaluation.** The bill requires managed service organizations (MSOs) to evaluate the existing supply and demand for medication-assisted treatment, other withdrawal management treatments, and the provision of recovery services. The department will contract for the evaluation at a cost of \$100,000 for each of the seven MSO regions in FY 2022-23.
- **Fentanyl education program.** Expenditures will increase to hire a contractor to develop the fentanyl education program for individuals receiving treatment in a residential or community-based treatment facility. The program will be developed by January 1, 2023, and updated annually.
- **Withdrawal and crisis management programs.** The CDHS will have an increase in expenditures for its withdrawal and crisis management programs of \$10 million in FY 2022-23.

- ***Involuntary commitment training.*** The CDHS requires 2.0 FTE from FY 2022-23 on to create and facilitate training of emergency departments and certified peace officers. Costs are paid from the General Fund.
- ***Study of the health effects of criminal penalties.*** The CDHS will have increased expenditures to contract for the study with an independent entity, estimated at \$200,000 in FY 2022-23 and FY 2023-24, and \$150,000 in FY 2024-25. The department also requires 0.5 FTE throughout the duration of the study to liaise with the independent entity and report on the study's finding. Costs are paid from the Correctional Treatment Cash Fund.
- ***Colorado Overdose Prevention Review Committee.*** Beginning in FY 2023-24, the fiscal note assumes the CDHS requires 0.5 FTE to staff the committee, collect data, and prepare reports. Operating expenses for committee meetings and travel reimbursements for committee members are also included.

Judicial Department. Costs will increase in the Judicial Department as a result of a shift in workload from local to state courts, and from the requirement to cover the costs of treatment for individuals with court-ordered representation.

- ***Probation.*** The bill moves a level 1 drug misdemeanor to a level 4 drug felony, which is assumed to shift about 150 cases from a local Denver County Court impact to a state district court impact, necessitating 1.2 FTE probation officer plus 0.5 FTE support staff to manage the estimated workload. Standard operating and capital outlay costs are included.
- ***Treatment.*** The bill requires residential or community-based treatment for certain individuals as a condition of probation, and specifies that an individual with court-ordered representation is not responsible for the costs. Statewide, there are an average of 4,714 misdemeanor possession defendants that are sentenced to probation (about 75 percent of total cases), with 90 percent of defendants relying upon court-appointed counsel. Assuming 25 percent of these cases involve fentanyl, factoring in data that 20 percent of defendants receive drug treatment as a condition of probation, and assuming that half will go to Community Corrections, the fiscal note estimates that approximately 100 individuals will be required to undertake such treatment with costs covered by the state. This is estimated to cost \$730,926 per year.
- ***Trial courts.*** This bill may increase workload and costs for the trial courts in the Judicial Department to process additional criminal case filings, for annual reporting to the legislature, and to process drug evaluations for fentanyl offenders. To the extent that offenders are sentenced to probation, workload and costs in the Division of Probation will increase. Workload and costs may increase in the agencies that provide representation to indigent persons, including the Office of the State Public Defender and the Office of Alternate Defense Counsel. Overall, it is assumed these impacts can be accomplished within existing appropriations. Should a change in funding be required for any agency or division with the Judicial Department, the fiscal note assumes it will be addressed through the annual budget process.

Department of Health Care Policy and Financing. Beginning in FY 2022-23, expenditures will increase by an estimated \$360,000 to reimburse hospitals for opiate antagonists. Workload will also increase to apply for federal approval for state plan amendments. Reimbursements to hospitals and emergency departments will be paid from the General Fund initially, and may be offset in future years if federal participation is secured.

Department of Corrections. Section 2-2-701, C.R.S., requires Legislative Council Staff to provide information to the General Assembly on long-term costs for prison capital construction, operations, and parole for any bill that potentially increases periods of imprisonment in the Department of Corrections. These impacts are described below.

- **Prison and parole operating costs.** Based on the assumptions provided in the Comparable Crime Analysis section, this bill increases prison operating costs for DOC by a total of \$2.4 million over the five-year period beginning in FY 2022-23, which are paid from the General Fund. The fiscal note assumes no prison operating impacts will occur in the first year due to the amount of time required for criminal filing, trial, disposition and sentencing of each case. Once an offender is released from prison, they are assigned to parole. Table 3 shows the estimated cost of the bill over the next five fiscal years.
- **Capital construction costs.** Based on the average per-bed construction costs of previous prison facilities, capital construction costs of \$4,640,246 would be required to increase prison bed space in line with the estimated increase in prison population under this bill. If the General Assembly determines that additional prison bed space is needed, this bill should include a transfer of General Fund to the Capital Construction Fund, to be reappropriated to the Corrections Expansion Reserve Fund. Money in the Corrections Expansion Reserve Fund is available for future DOC construction projects, which would be identified and funded through the annual budget process based on the state's overall prison needs.

**Table 3
Prison and Parole Operating Costs Under HB 22-1326**

Fiscal Year	Prison ADP Impact	Prison Cost	Parole ADP Impact	Parole Cost	Total Costs
FY 2022-23	-	-	-	-	-
FY 2023-24	19.1	\$470,573	(19.1)	(\$120,063)	\$350,510
FY 2024-25	25.9	\$635,732	0.5	\$3,010	\$638,742
FY 2025-26	25.9	\$635,732	13.4	\$84,111	\$719,843
FY 2026-27	25.9	\$635,732	13.4	\$84,111	\$719,843
				Total	\$2,428,938

Department of Law. The Attorney General’s office will have an increase in costs and workload to conduct the internet study and publish a report of its findings.

Department of Public Safety. The Division of Criminal Justice will have an increase in workload and potential costs to the extent the Synthetic Opiate Grant Investigation and Distribution Interdiction Grant Program receives a future appropriation, or gifts, grants, or donations. This will be addressed through the annual budget process.

Legislative Department. Workload will increase for the Office Legislative Legal Services, the Legislative Council Staff, and the Joint Budget Committee staff to perform a post-enactment review. No change in appropriations is required.

Governor's Office. The Governor's Office of Boards and Commissions will have increased workload to make the required appointments under the bill, including recruiting, vetting, and interviewing potential appointees, and following the appointment through the Senate confirmation process. It is assumed that the Governor's Office may seek funding through the annual budget process, if necessary, based on the total workload of the Boards and Commissions office and the cumulative impact of all legislation affecting the office.

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. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

Local Government

Beginning in FY 2022-23, this bill is expected to increase local government workload and costs, as described below. Impacts will vary depending on the number of offenses committed within a local government's jurisdiction.

District attorneys. The bill increases workload and costs for district attorneys to prosecute new drug felony offenses. Workload will also increase to report on drug or alcohol overdose investigations provided by law enforcement agencies. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

Law enforcement agencies. Workload will increase for law enforcement agencies to report on whether arrests are made, or not made pursuant to statutory immunity, as a result of the investigation of an emergency drug or alcohol overdose.

County jail—treatment. Workload will increase in county jails to develop protocols for medication-assisted treatment or other withdrawal management care, and to provide opiate antagonists to certain individuals upon release from custody. These costs will be offset, at least partially, by funding made available in this bill. Once state funding expires, counties will be responsible for the full costs of these services.

County jail—incarceration. Because the bill temporarily increases criminal penalties for possession of fentanyl and prohibits offenders from being sentenced to Department of Corrections, additional offenders may be sentenced to county jails. The exact impact will depend on sentencing decisions by judges and whether persons are sentenced to jail, community corrections, probation, or another alternative sentence. For the current fiscal year, the state reimburses county jails at a daily rate of \$63.69 for housing state inmates.

Effective Date

The bill was signed into law by the Governor on May 25, 2022, and takes effect January 1, 2023, except that the sections pertaining to fentanyl-related offenses and agency programs took effect July 1, 2022. The bill applies to offenses committed on or after July 1, 2022. The bill includes various conditional provisions to account for whether or not House Bill 22-1278 creating the Behavioral Health Administration takes effect, which do not substantively affect the provisions or effective dates in this bill.

State Appropriations

For FY 2022-23, the bill includes the following appropriations to the following agencies:

- **Department of Public Health and Environment:**
 - \$5,792,413 from the General Fund and 1.5 FTE, of which \$300,000 is further appropriated to the department through FY 2023-24, and \$5,000,000 is further appropriated to the department through FY 2024-25;
 - \$26,000,000 from the Behavioral and Mental Health Cash Fund, which is further appropriated to the department through December 30, 2024, of which:
 - \$19,700,000 and 1.5 FTE is appropriated to the Opiate Antagonist Bulk Purchase Fund;
 - \$6,000,000 and 1.5 FTE is appropriated to the Harm Reduction Grant Program Cash Fund; and
 - \$300,000 is for use by the Prevention Services Division.
- **Department of Human Services:**
 - \$10,986,092 from the General Fund and 3.6 FTE, of which \$10,000,000 is further appropriated to the department through June 30, 2025;
 - \$3,000,000 from the Behavioral and Mental Health Cash Fund, which is further appropriated to the department through December 30, 2024; and
 - \$402,963 from the Correctional Treatment Cash Fund and 0.5 FTE.
- **Department of Health Care Policy and Financing:**
 - \$360,000 from the General Fund.
- **Judicial Department:**
 - \$138,362 from the General Fund and 1.6 FTE; and
 - \$730,926 from the Correctional Treatment Cash Fund.

- **Department of Law:**
 - \$150,000 from the General Fund.
- **Department of Public Safety:**
 - \$7,000,000 from the General Fund and 1.8 FTE, which is further appropriated to the department through FY 2023-24.

Departmental Difference

The CDPHE estimates the need for an additional 2.1 FTE to implement the provisions of the bill. Because the bill is funding existing programs, the fiscal note assumes that CDPHE has structures in place to manage additional funding provisions with the staffing levels included in the fiscal note.

State and Local Government Contacts

Corrections

District Attorneys

Human Services

Judicial

Public Health and Environment

Regulatory Agencies

Counties

Health Care Policy and Financing

Information Technology

Law

Public Safety