



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number: LLS 23-0281
Prime Sponsors: Rep. Lynch

Date: May 15, 2023
Bill Status: Postponed Indefinitely
Fiscal Analyst: Erin Reynolds | 303-866-4146
erin.reynolds@colego.gov

Bill Topic: OPIOID HARM REDUCTION

Summary of Fiscal Impact:

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

The bill would have modified criminal penalties for synthetic opioid possession, created a program in the Department of Education for the bulk purchase of opioid antagonists, and required opioid antagonist use reporting by peace officers. It would have increased state expenditures, local government workload, and potentially state revenue on an ongoing basis. It also would have created a one-time state transfer in FY 2023-24.

Appropriation Summary:

For FY 2023-24, the bill would have required appropriations of \$2,589,124 to multiple agencies.

Fiscal Note Status:

The fiscal note reflects the introduced bill. This bill was postponed indefinitely by the House Judiciary Committee on April 11, 2023; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under HB 23-1164

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	General Fund	\$589,124	\$564,144
	Cash Funds ¹	\$1,949,803	\$50,197
	Centrally Appropriated	\$143,472	\$141,393
	Total Expenditures	\$2,682,399	\$755,734
	Total FTE	7.8 FTE	7.8 FTE
Transfers²	General Fund	(\$2,000,000)	-
	Cash Funds	\$2,000,000	-
	Net Transfer	\$0	-
Other Budget Impacts	General Fund Reserve	\$388,369	\$84,622

¹ The fiscal note assumes that funds transferred to the Department of Education will be spent over at least two years.

² This transfer is assumed to occur via an appropriation from the General Fund in FY 2023-24.

Summary of Legislation

The bill eliminates “knowingly” from the synthetic opiate possession crime, as well as the provision that reduces a level 4 drug felony for possession of 1 to 4 grams of synthetic opiates to a level 1 drug misdemeanor if the defendant made a reasonable mistake of fact that the drugs contained synthetic opiates.

The bill creates the Opioid Antagonist Fund in the Colorado Department of Education (CDE) to bulk purchase and distribute opioid antagonists to eligible schools. The CDE is authorized to seek, accept, and expend gifts, grants, or donations to the fund, and the bill requires a transfer of \$2.0 million to the fund in FY 2023-24. The CDE may contract with a prescription drug outlet for bulk purchase of opioid antagonists. Beginning in 2025, the CDE must annually report to the legislature on opioid antagonists. The bill extends good Samaritan protections to any person acting on behalf of CDE to furnish an opioid antagonist to an eligible school.

Finally, the bill requires every agency employing a peace officer to submit annual reporting to the Colorado Department of Public Health and Environment (CDPHE) concerning every incident in which a peace officer administered an opioid antagonist to an individual. The CDPHE must create a consolidated report on this information and provide this report to specified committees of the General Assembly.

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. Using Judicial Department data, the following section outlines crimes that are comparable to the offense in this bill and discusses assumptions on future rates of criminal convictions resulting from the bill.

Prior conviction data. This bill removes the level 1 drug misdemeanor sentence reducer for unknowing possession of 1 to 4 grams of a synthetic opiate, making possession of 1 to 4 grams of a synthetic opiate a level 4 drug felony in all cases. From FY 2019-20 to FY 2021-22, 17,893 individuals have been convicted and sentenced for the offense of level 1 drug misdemeanor possession of less than 4 grams of a schedule I or II controlled substance. Of the persons convicted, 12,113 were male, 5,744 were female, and 36 did not have a gender identified. Demographically, 15,100 were White, 1,771 were Black/African American, 691 were Hispanic, 94 were Asian, 78 were American Indian, 120 were classified as "Other," and 39 did not have a race identified.

Assumptions. This bill will increase the number of felony drug possession cases by removing a sentence reducer in cases where the individual made a reasonable mistake of fact; thereby moving cases from misdemeanor to felony dockets. Under current law, any defendant convicted of a level 4 drug felony for synthetic opiate possession may not be sentenced to the Department of Corrections (DOC). Rather, the primary fiscal impact from the bill will occur from cases moving from Denver County Court (which is funded by the City and County of Denver) to Denver District Court (which is funded by the state). From 2017 to 2019, an average of 1,520 cases per year were filed in Denver with a possession of a schedule I or II controlled substance charge (this time range is used to avoid the influence of the COVID pandemic and House Bill 19-1263, which moved many cases from state court

to Denver County Court) on filings. Based on national and state estimates of use of fentanyl, it is estimated that 25 percent of these cases, 380 cases, involved fentanyl, and 75 percent of this subset were for possession of 1 to 4 grams, and which are misdemeanors under current law. After passage of this bill, these cases will become felony cases filed in Denver District Court. Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Revenue

Criminal fines and court fees. By modifying a drug possession offense, the bill may increase state revenue from criminal fines and court fees by an indeterminate amount beginning in FY 2023-24, 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. 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 over fines and many individuals enter into payment plans, 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 CDE to seek gifts, grants, or donations. No amount has been identified; this revenue is not subject to TABOR.

State Transfers

In FY 2023-24, the bill transfers \$2.0 million from the General Fund to the Opioid Antagonist Fund in the CDE for bulk purchase of opiate antagonists. It is assumed that this transfer will be made via and appropriation included in this bill.

State Expenditures

The bill increases state expenditures by \$2.7 million in FY 2023-24 and about \$750,000 in FY 2024-25 and ongoing in the Judicial Department and the Department of Education. Expenditures are shown in Table 2 and detailed below. First-year costs are prorated for the General Fund pay date shift where applicable. Standard and capital outlay expenses are included for all FTE.

Table 2
Expenditures Under HB 23-1164

	FY 2023-24	FY 2024-25
Judicial Department – Trial Courts		
Personal Services	\$107,443	\$117,212
Operating Expenses	\$2,565	\$2,565
Capital Outlay Costs	\$30,454	\$520
Centrally Appropriated Costs ¹	\$22,187	\$24,204
FTE – Personal Services	1.1 FTE	1.2 FTE
Trial Courts Subtotal	\$162,649	\$144,501
Judicial Department – Probation Division		
Personal Services	\$389,997	\$425,452
Operating Expenses	\$15,995	\$15,995
Capital Outlay Costs	\$42,670	\$2,400
Centrally Appropriated Costs ¹	\$97,112	\$107,040
FTE – Personal Services	5.5 FTE	6.1 FTE
Probation Division Subtotal	\$545,774	\$550,887
Department of Education		
Personal Services	\$116,899	\$49,522
Operating Expenses	\$1,620	\$675
Capital Outlay Costs	\$6,670	-
Opiate Bulk Purchase ²	\$1,824,614	-
Centrally Appropriated Costs ¹	\$24,173	\$10,149
FTE – Personal Services	1.2 FTE	0.5 FTE
CDE Subtotal	\$1,973,976	\$60,346
Total	\$2,682,399	\$755,734
Total FTE	7.8 FTE	7.8 FTE

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

² The fiscal note show the spending in FY 2023-24 for informational purposes; actual spending may vary and continue into future years.

Judicial Department – Trial Courts. This bill will increase workload for the Judicial Department by moving an estimated 285 cases (see Comparable Crime Analysis section) that would have been charged as misdemeanors in Denver County Court to Denver District Court charged as felonies. On average, a district court judicial officer can process 486 felony cases per year; however, drug cases require less resources than other felony criminal cases, such as homicide, so the fiscal note estimates that a district court judicial officer can process 972 felony cases per year. As a result, the trial courts requires 0.3 FTE district court judicial officer and 0.9 FTE court staff at the department’s 3-to-1 support staff ratio.

Judicial Department – Probation. Judicial Department data indicate that 97 percent of cases filed for substance possession result in a conviction, 277 cases under the bill. Of these cases, 74 percent result in a sentence to probation, or 205 cases. Data show that each individual on probation for a drug offense has an average of 1.14 cases for which they are sentenced; therefore, the fiscal note estimates that 180 individuals will serve probation as a result of the bill. Assuming cases will range from administrative supervision to intensive supervision, the Judicial Department requires 4.4 FTE Probation Officer with 0.7 FTE Supervisor and 1.9 FTE Support Staff.

Judicial Department – Independent Agencies. 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. Costs will be addressed through the annual budget process once caseload increases are known.

Department of Education. The CDE requires 1.2 FTE in FY 2023-24 and 0.5 FTE in FY 2024-25 to manage the bulk purchase program, including providing rulemaking support, soliciting a vendor, prioritizing medication distribution, providing technical assistance, and developing and publishing reporting requirements. The fiscal note assumes that two years of administrative costs will be paid out of the \$2.0 million transfer to the Opioid Antagonist Fund, with the remainder to be spent on bulk purchases of opioid antagonists. The bill specifies that the CDE cannot spend money appropriated from the fund until the Colorado Department of Public Health and Environment has spent all \$19.7 million appropriated for opioid antagonists in HB 22-1326. This may result in spending in the CDE occurring later than estimated in this fiscal note.

Peace officer reporting. The following departments will have an increase in workload to report to the CDPHE annually on events when peace officers administered opioid antagonists to individuals: Corrections, Higher Education, Human Services, Law, Natural Resources, Public Safety, and Revenue. In addition, the Peace Officers Standards and Training Board in the Department of Law may conduct outreach and education on the reporting requirement. No change in appropriations is required for any agency. The CDPHE can accomplish reporting to the legislature within existing workloads.

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.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Local Government

The bill will impact the Denver County Court, district attorneys, and local law enforcement.

Denver County Court. As discussed above, the state is anticipated to have an increase of 285 cases being filed in the district court instead of Denver County Court, reducing workload for the Denver County Court by the same amount.

District attorneys. Workload for district attorneys may decrease by removing casework related to proving a defendant did or did not know about fentanyl in the controlled substance they possessed; however, overall caseload is expected to remain the same.

Law enforcement. Local law enforcement agencies, including sheriffs and municipal police, will have an increase in workload to report to the CDPHE regarding their administration of opioid antagonists to individuals.

School District

Workload for school districts will increase to provide training and manage opioid antagonist administration reporting.

Statutory Public Entity

The Regional Transportation District will have an increase in workload to report to the CDPHE regarding administration of opioid antagonists.

Effective Date

The bill takes effect July 1, 2023. The drug felony applies to offenses committee on or after this date.

State Appropriations

For FY 2023-24, the bill requires the following General Fund appropriations:

- \$589,124 to the Judicial Department and 6.6 FTE; and
- \$2,000,000 to the Opioid Antagonist Fund.

For FY 2023-24, the Department of Education will require an appropriation of \$2,000,000 from the Opioid Antagonist Fund, and 1.2 FTE.

State and Local Government Contacts

Behavioral Health Administration
Denver County Courts
Higher Education
Law
Public Safety

Corrections
District Attorneys
Human Services
Natural Resources
Revenue

Counties
Education
Judicial
Public Health and Environment