

**FINAL  
FISCAL NOTE**

**Drafting Number:** LLS 12-0120

**Date:** June 28, 2012

**Prime Sponsor(s):** Sen. Foster  
Rep. Brown

**Bill Status:** Deemed Lost

**Fiscal Analyst:** Kerry White (303-866-3469)

**TITLE:** CONCERNING PENALTIES ASSOCIATED WITH CATHINONES, AND, IN CONNECTION THEREWITH, ESTABLISHING A MISDEMEANOR PENALTY FOR POSSESSION OF A CATHINONE.

<b>Fiscal Impact Summary</b>	<b>FY 2012-2013</b>	<b>FY 2013-2014</b>
<b>State Revenue</b>		
General Fund	Potential increase.	Potential increase.
Cash Funds		
Fines Collection Cash Fund	<\$5,000	<\$5,000
<b>State Expenditures</b>		
General Fund		\$20,706
<b>FTE Position Change</b>		
<b>Effective Date:</b> The bill was deemed lost in the House of Representatives. However, its provisions were adopted in House Bill 12-1310, which was signed by the Governor and took effect June 7, 2012.		
<b>Appropriation Summary for FY 2012-2013:</b> None required.		
<b>Local Government Impact:</b> See Local Government Impact section.		

**Summary of Legislation**

The bill moves cathinones from the schedule 1 list to the list of controlled substances. It defines a cathinone as a synthetic or natural material containing cathinone chemical structures and changes penalties for possession or distribution of a cathinone as follows:

- the penalty for a person who possesses any amount of cathinone is reduced from a class 4 felony (for more than four grams) or a 6 felony (for less than four grams) to a class 1 misdemeanor;
- a new class 3 felony is established for a person who distributes, manufactures, dispenses, or sells, or induces, attempts to induce, or otherwise conspires to do the same for a cathinone; and
- a new civil penalty of between \$10,000 and \$500,000, credited to the General Fund, is created for deceptive trade practices by a person or entity that distributes, manufactures, sells, or purchases bath salts or other products containing a cathinone.

As is the case under current law, enhanced sentencing is permitted for distribution of cathinone products to minor by an adult that is at least two years older than the minor.

## **Background**

Cathinone is currently listed as one of approximately 150 schedule 1 substances, which also include more commonly known drugs such as heroin, morphine, codeine, peyote, GHB, BZP, and mescaline. According to the Judicial Branch, on average 2,314 adults and 130 juveniles are convicted of possession of a schedule 1 substance per year. A total of 2,484 adults and 131 juveniles are convicted of distribution, intent to distribute or conspiracy to distribute a schedule 1 substance each year.

Under current law, possession of a cathinone is punishable by either a class 4 felony (for more than four grams) or a class 6 felony (for less than four grams). Distribution of a schedule 1 substance, including a cathinone, is currently a class 3 felony, with enhanced sentencing for crimes that involve minors. There were no identified cases of specific prosecutions for possession or distribution of a cathinone as of this writing. However, the current definition of a cathinone does not explicitly include synthetic materials or its identified derivatives.

## **State Revenue**

Overall, state revenue is anticipated to increase under the bill.

State cash fund revenue credited to the Fines Collection Cash Fund in the Judicial Branch for criminal penalties is not anticipated to increase by more than \$5,000. While the bill lowers the fine penalty for possession of a cathinone, there were no identified cases as of this writing, and, therefore, the fiscal note assumes no net change in revenue from this provision. However, this analysis assumes that 1 new offender every 5 years will be convicted of a distribution-related charge (class 3 felony) and 5 offenders will be convicted of a possession-related charge (class 1 misdemeanor) for one of the cathinone derivatives not currently prohibited by Colorado law. Under current law, the fine for a class 3 felony is \$3,000 to \$750,000 and the fine for a class 1 misdemeanor is \$500 to \$5,000. Because the courts have the discretion of incarceration or imposing a fine, and the timing of payments are established on a per-offender basis, the impact to the cash fund cannot be determined.

The bill also allows for civil penalties of between \$10,000 and \$500,000 for distributing, dispensing, or selling any product labeled as a bath salt that contains a cathinone. These fines are credited to the General Fund. Because there are no known examples of illegal cathinone seizures within Colorado, the amount of potential increased revenue cannot be quantified.

## State Expenditures

**This bill is anticipated to increase state General Fund expenditures by at least \$20,706 per year, beginning in FY 2013-14.** By expanding the definition of a cathinone, it is anticipated that additional persons may be charged with possession- or distribution-related crimes. The fiscal note is based upon the following assumptions:

- 5 new offenders per year will be convicted of a class 1 misdemeanor for possession of a synthetic or cathinone derivative; and
- 1 new offender every 5 years will be convicted of a class 3 felony for distribution of a synthetic or cathinone derivative.

***Department of Corrections costs.*** The Department of Corrections (DOC) will experience an increase in costs resulting from one new offender admitted to the system every five years for a class 3 felony. 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. As state-run facilities are currently at or near capacity, any such 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 \$56.73 per offender per day, including the current daily rate of \$52.69 and an estimated \$4.04 per offender per day for medical care provided by the DOC. 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 2012-13	0.0	\$0	\$0	\$0
FY 2013-14	1.0	\$0	-	\$20,706
FY 2014-15	1.0	\$0	-	\$20,706
FY 2015-16	1.0	\$0	-	\$20,706
FY 2016-17	1.0	\$0	-	\$20,706
Total	4.0	\$0	\$0	\$82,826

In current practice, drug screening instruments do not detect the presence of cathinones. To the extent that new tools are developed to detect cathinones and cathinone derivatives, costs may also increase as a result of individuals violating the terms of probation or parole agreements. It is not possible to estimate the potential future cost as of this writing.

***Judicial department.*** The fiscal impact of the bill to the Judicial Branch is expected to be minimal. Because the department does not currently track convictions related to possession or distribution of cathinone specifically, it is unknown what the change in filings will be. However, by adding synthetic materials which are not currently regulated or prohibited to the list, this analysis assumes there will be a minimal increase in workload. Should workload exceed available resources, the Judicial Branch will request an increase in appropriations through the annual budget process.

***Department of Human Services, Division of Youth Corrections (DYC).*** As of this writing, no specific cases concerning juvenile possession or distribution of cathinones were identified. The fiscal note assumes that juveniles convicted of possession of a cathinone will not be sentenced to youth correctional facilities and that any youth arrested for distribution of cathinones are likely to be charged and convicted as an adult. For this reason, this analysis assumes no increase in costs for the DYC.

## **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. This bill reduces the penalty for possession of a cathinone from either a class 4 or class 6 felony to a class 1 misdemeanor. It also creates a new class 3 felony for crimes related to distribution and sales of a cathinone. Under current law, distribution of a schedule I substance is also a class 3 felony.

While no specific cases of cathinone distribution or possession have been identified in Colorado as of this writing, the fiscal note assumes that the majority of current cathinone users have purchased the drug legally. However, the current definition of a cathinone does not include synthetic materials and according to the U.S. Department of Justice, not all synthetic cathinones have been publicly identified as of this writing. For this reason, the fiscal note assumes one new distribution-related conviction may occur every five years as new derivatives are identified. By addressing the problem of cathinone distribution at the manufacturing and retail level, this analysis assumes possession charges will remain negligible.

## **Local Government Impact**

District attorneys may experience an increase in workload as a result of new filings. However, the fiscal impact of the bill on these agencies is expected to be minimal and has not been estimated.

In addition, this bill creates a new class 1 misdemeanor. The penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, 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 a daily rate of \$50.44 to house state inmates. If all five offenders received mid-range sentences of 12 months, the increase to local governments is about \$100,000.

**Departments Contacted**

Corrections

Human Services

Judicial

Law