

Fiscal Note

BILL # HB 2802

TITLE: fentanyl sales; manufacture; sentencing; testing

SPONSOR: Gress

STATUS: House Engrossed

PREPARED BY: Geoffrey Paulsen

Description

The bill would impose stricter sentences for offenders convicted of the sale, possession of equipment for manufacturing, manufacturing, or trafficking narcotics involving a single unit dose of at least 2 milligrams of fentanyl. The bill also requires law enforcement agencies to submit confiscated fentanyl to an accredited crime laboratory for testing.

Estimated Impact

The bill would increase costs for the Arizona Department of Corrections (ADC) by extending the time individuals convicted of crimes serve in state prison, thereby increasing the total population. In the short term, ADC would have additional marginal costs (such as food, laundry, etc.) of \$2.3 million beginning in FY 2026 and increasing to \$6.9 million in FY 2033 and every year thereafter.

Additionally, ADC estimates that when fully phased-in in FY 2033, the bill would increase the ADC population by a total of 3,200 inmates. Such an increase may eventually require additional staffing.

The Arizona Administrative Office of the Courts (AOC) believes the bill would likely create more trials and increase court costs and potentially require additional prosecutors and judges but did not estimate a specific impact.

Analysis

Under current law (A.R.S. § 13-3408), the crime of possession of a narcotic drug for sale, manufacture of a narcotic drug, or trafficking a narcotic drug is classified as a class 2 felony if the amount of the drug is below the statutory threshold. Statute requires a sentence of 3.5 to 12.5 years for a first offense, with a presumptive sentence of 5 years. For a second offense, statute requires a sentence of 4.5 to 23 years, with a presumptive sentence of 9.25 years.

Additionally, under current law the crime of possession of equipment and/or chemicals for the purpose of manufacturing a narcotic drug is classified as a class 3 felony. Statute makes this crime eligible for probation. If probation is not ordered, statute requires a sentence of 2 to 8.75 years with a presumptive sentence of 3.5 years.

The bill would increase the required sentence for these offenses if the narcotic involved is fentanyl with a single unit dose of at least 2 milligrams. The bill would require a sentence of 5 to 15 years for a first offense, with a presumptive sentence of 10 years. For a second offense, the bill would require 10 to 20 years with a presumptive sentence of 15 years.

ADC reports that in CY 2022 660 inmates were convicted of violating A.R.S. § 13-3408. Based on a random sample of the 660 inmates, ADC estimates 550 inmates were convicted of a crime involving fentanyl, with an average sentence of 4 years. Under the bill, ADC assumed these offenders would be sentenced for, on average, 10 years. As a result, over a roughly 6-year period starting in FY 2026, ADC estimates that 550 inmates yearly who would otherwise leave ADC would remain in prison. When the transition is complete in FY 2033, ADC estimates that the population would increase by about 3,200 inmates.

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In the short term, ADC estimates that the cost of the bill would be the marginal cost of housing inmates for longer, or \$5.92 per day. Based on ADC's estimate, this marginal cost would be \$2.3 million starting in FY 2026 and would grow to \$6.9 million by FY 2033 due to the cumulative impact of longer sentences.

ADC reports that the estimated inmate population impact could require additional beds but did not provide a cost estimate for adding new beds. As of February 28, 2023, ADC reported a total of 10,548 bed vacancies across the entire ADC system. If these vacancies remain available as the fentanyl-related population grows, we may not need to construct new beds. An eventual increase of 3,200 inmates, however, may necessitate either hiring more staff or increasing overtime.

The bill would also require a law enforcement agency that confiscates fentanyl to submit a sufficient sample to an accredited crime laboratory for testing to determine the appropriate criminal violation. According to the Arizona Department of Public Safety (DPS), all samples of fentanyl are currently submitted to the DPS laboratory for testing and to determine the amount of fentanyl in the sample. As a result, we do not estimate a cost associated with this provision.

Local Government Impact

The bill could increase county costs for prosecuting offenders under the revised sentencing guidelines. We are unable to estimate the impact in advance.

3/2/23