

Revised

Consolidated Fiscal Note

2023-2024 Legislative Session

SF2659 - 0 - Fentanyl Weight Threshold and Penalty

Chief Author: **Judy Seeberger**
 Committee: **Judiciary And Public Safety**
 Date Completed: **3/21/2023 1:09:40 PM**
 Lead Agency: **Sentencing Guidelines Comm**
 Other Agencies:
 Corrections Dept Public Safety Dept

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Corrections Dept						
General Fund	-	10	29	49	67	
Public Safety Dept						
General Fund	-	407	371	371	371	371
State Total						
General Fund	-	417	400	420	438	438
		Total	417	400	420	438
		Biennial Total		817		858

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Corrections Dept					
General Fund	-	.1	.3	.5	.7
Public Safety Dept					
General Fund	-	3	3	3	3
		Total	3.1	3.3	3.5
			3.3	3.5	3.7

Lead LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

This fiscal note has been revised to include an additional agency (Department of Public Safety) impacted by this legislation.

LBO Signature: Karen McKey **Date:** 3/21/2023 1:09:40 PM
Phone: 651-284-6429 **Email:** karen.mckey@lbo.mn.gov

Revised

State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2	Biennium			Biennium	
Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Corrections Dept					
General Fund	-	10	29	49	67
Public Safety Dept					
General Fund	-	407	371	371	371
Total	-	417	400	420	438
Biennial Total			817		858
1 - Expenditures, Absorbed Costs*, Transfers Out*					
Corrections Dept					
General Fund	-	10	29	49	67
Public Safety Dept					
General Fund	-	407	371	371	371
Total	-	417	400	420	438
Biennial Total			817		858
2 - Revenues, Transfers In*					
Corrections Dept					
General Fund	-	-	-	-	-
Public Safety Dept					
General Fund	-	-	-	-	-
Total	-	-	-	-	-
Biennial Total			-		-

Revised

Fiscal Note

2023-2024 Legislative Session

SF2659 - 0 - Fentanyl Weight Threshold and Penalty

Chief Author: **Judy Seeberger**
 Committee: **Judiciary And Public Safety**
 Date Completed: **3/21/2023 1:09:40 PM**
 Agency: **Sentencing Guidelines Comm**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karen McKey **Date:** 3/9/2023 11:12:06 AM
Phone: 651-284-6429 **Email:** karen.mckey@lbo.mn.gov

Revised

State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2 Dollars in Thousands	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-
Biennial Total			-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*					
Total	-	-	-	-	-
Biennial Total			-		-
2 - Revenues, Transfers In*					
Total	-	-	-	-	-
Biennial Total			-		-

Bill Description

This bill amends adds a definition for fentanyl under Minn. Stat. § 152.01; and creates new fentanyl thresholds for controlled substance crimes under Minn. Stat. §§ 152.021 to 152.023, and § 152.025, equal to those that now exist for heroin. The new thresholds are:

First-Degree Sale 10 gr. or more;

First-Degree Possession 25 gr. or more;

Second-Degree Sale 3 gr. or more;

Second-Degree Possession 6 gr. or more;

Third-Degree Possession: 3 gr. or more; and

Fifth-Degree trace amount threshold for first-time gross misdemeanors Less than 0.05 gr.

The bill is effective August 1, 2023, and applies to crimes committed on or after that date.

Assumptions

It is generally assumed that due to the COVID-19 health pandemic, the cases sentenced in 2020 and 2021 are not a fair approximation of cases sentenced in the future. For this reason, 2019 case data are generally used to estimate impact. However, due to the reported increase in fentanyl-related drug overdose deaths in Minnesota in 2021, MSGC staff used 2021 Monitoring data for this fiscal note to better estimate its impact.

It is assumed that future sales and possessions of fentanyl will be similar to those controlled substance crimes sentenced in 2021 known to have involved fentanyl. According to 2021 MSGC Monitoring data, there were 3,912 controlled substance cases sentenced in Minnesota. According to Minnesota Offense Codes (MOCs) in that data, 119 cases were labeled as “synthetic narcotics.” MSGC staff reviewed the criminal complaints for those synthetic narcotics cases to determine which ones were labeled as fentanyl cases. MSGC staff found 19 felony-level fentanyl cases, six of which would be sentenced at a higher severity level under the provisions of this bill: 1 fifth-degree case and 1 second-degree case would move to first-degree; 1 fourth-degree case and 1 third-degree case would move to second-degree.

It is assumed that the cases moving to higher severity levels will be given the average imprisonment rate and length of sentence at the higher severity levels; however, it is also assumed that cases receiving mitigated dispositional departures (the Guidelines recommend prison but the defendant in the case gets probation) would continue at the same rate in the future.

Revised

Expenditure and/or Revenue Formula

Long-Term Fiscal Considerations

Based on the above assumptions, it is estimated that there will be a need for an additional five prison beds. One bed would be needed in FY2024, two beds in FY2025, three beds in FY2026, four beds in FY2027, and five beds in FY2028 and every year after.

Local Fiscal Impact

Based on the above assumptions, it is estimated that there will be no local government fiscal impact.

References/Sources

2021 MSGC Monitoring Data.

Minn. Dept. of Health. (July 14, 2022). State Reports Record Drug Overdose Deaths in 2021 (Press Release). Retrieved March 3, 2023 at <https://www.health.state.mn.us/news/pressrel/2022/drugod071422.html>

Agency Contact:

Agency Fiscal Note Coordinator Signature: Jill Payne

Date: 3/3/2023 10:27:30 AM

Phone: 651-757-1725

Email: jill.payne@state.mn.us

Revised

Fiscal Note

2023-2024 Legislative Session

SF2659 - 0 - Fentanyl Weight Threshold and Penalty

Chief Author: **Judy Seeberger**
 Committee: **Judiciary And Public Safety**
 Date Completed: **3/21/2023 1:09:40 PM**
 Agency: **Corrections Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		
		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings) Dollars in Thousands	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	10	29	49	67
Total	-	10	29	49	67
Biennial Total			39		116

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	.1	.3	.5	.7
Total	-	.1	.3	.5	.7

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karen McKey **Date:** 3/12/2023 11:43:45 PM
Phone: 651-284-6429 **Email:** karen.mckey@lbo.mn.gov

Revised

State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	10	29	49	67	
Total		-	10	29	49	67
Biennial Total				39		116
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	10	29	49	67	
Total		-	10	29	49	67
Biennial Total				39		116
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	
Total		-	-	-	-	-
Biennial Total				-		-

Bill Description

H.F. 615 provides the same weight threshold and penalty for fentanyl as is provided for heroin.

Assumptions

The Department of Corrections assumes:

- Prison bed costs are based on a marginal cost per diem of \$42.50 for FY2024, \$48.55 for FY2025, \$50.67 for FY2026 and \$50.58 for FY2027 and each subsequent year. This includes marginal costs for all facility, private and public bed rental, health care and support costs.
- The annual cost is estimated by multiplying the number of prison beds needed by the subsequent annual per diem. Unless otherwise noted, prison beds are phased in on a quarterly basis.
- Prison bed FTE impact for the increase in the offender population assumes 80 percent of the ongoing bed impact is personnel-related and the average salary per FTE is \$72,000 per year including benefits.

The Minnesota Sentencing Guidelines Commission assumes:

- That future sales and possessions of fentanyl will be similar to those controlled substance crimes sentenced in 2021 known to have involved fentanyl.

Expenditure and/or Revenue Formula

Cost of Prison Beds

Fiscal Year	2024	2025	2026	2027
Number of Prison Beds	1	2	3	4
Cost of Prison Beds (in 000s)	10	29	49	67
FTE	0.1	0.3	0.5	0.7

Long-Term Fiscal Considerations

Revised

The commission estimates that there will be a need for an additional five prison beds. One bed will be needed in FY 2024, two beds in FY 2025, three beds in FY 2026, four beds in FY 2027, and five beds in FY 2028 and every year thereafter.

Local Fiscal Impact

The Department does not expect local units of governments to incur costs as a result of this bill.

References/Sources

Department of Corrections staff
Minnesota Sentencing Guidelines Commission

Agency Contact:

Agency Fiscal Note Coordinator Signature: Kwesi Pasley

Date: 3/10/2023 5:42:50 PM

Phone: 651-259-3667

Email: kwesi.pasley@state.mn.us

Revised

Fiscal Note

2023-2024 Legislative Session

SF2659 - 0 - Fentanyl Weight Threshold and Penalty

Chief Author: **Judy Seeberger**
 Committee: **Judiciary And Public Safety**
 Date Completed: **3/21/2023 1:09:40 PM**
 Agency: **Public Safety Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	407	371	371	371	371
Total	-	407	371	371	371	371
Biennial Total			778			742

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	3	3	3	3
Total	-	3	3	3	3

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

This fiscal note was revised to assign DPS.

LBO Signature: Laura Cecko **Date:** 3/20/2023 9:46:54 PM
Phone: 651-284-6543 **Email:** laura.cecko@lbo.mn.gov

Revised

State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027	
General Fund	-	407	371	371	371	371
Total	-	407	371	371	371	371
			778			742
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	407	371	371	371	371
Total	-	407	371	371	371	371
			778			742
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	-
Total	-	-	-	-	-	-
			-			-

Bill Description

Section 1: Defines fentanyl.

Section 2: Amends sale crimes, in the first degree, to include fentanyl with heroin.

Section 3: Amends possession crimes, in the first degree, to include fentanyl with heroin.

Section 4: Amends sale crimes, in the second degree, to include fentanyl with heroin.

Section 5: Amends possession crimes, in the second degree, to include fentanyl with heroin.

Section 6: Amends possession crimes, in the third degree, to include fentanyl with heroin.

Section 7: Modifies the penalties for amounts of items possessed to include fentanyl.

Assumptions

The Bureau of Criminal Apprehension (BCA) Forensic Science Service (FSS) currently provides scientific analysis in cases involving the suspected presence of controlled substances. Testing for the presence of controlled substances is performed on over 9,000 cases per year.

We continue to see a large number of cases that involve fentanyl. Many of these cases involve pharmaceuticals (pills). The current minimum threshold level to meet is 10g (3rd degree possession/2nd degree sales) with additional thresholds at 50g and 500g. Amounts between 0.25g and 10g make up the majority of the fentanyl cases tested at the BCA. This bill would add thresholds at 3g, 6g, and 25g.

Testing procedures include evidence intake, documentation, weighing the evidence and presumptive color tests followed by confirmatory instrumental analysis. This procedure is conducted on each item of evidence in a case until the highest statutory weight threshold is reached (e.g. 0.25g for cases with estimated weights less than 10g), at which point analysis stops.

Fentanyl cases have grown rapidly over the past few years with 2022 being the highest so far. The number of items testing positive for fentanyl or fentanyl-related substance nearly doubled between 2020 and 2022. This trend is expected to continue.

Revised

Count of Substance	2019	2020	2021	2022	Total
Acetyl fentanyl	149	74	62	41	326
Benzylfentanyl	3	0	0	0	3
Carfentanil	0	29	1	0	30
Cyclopropyl fentanyl	2	0	0	0	2
Cyclopropyl fentanyl/crotonyl fentanyl	19	1	0	0	20
Fentanyl	584	1134	1522	2002	5242
Fluorofentanyl	0	0	106	299	405
Fluoroisobutyrylfentanyl	0	0	1	0	1
Furanyl fentanyl	3	0	0	0	3
Methoxyacetylfentanyl	3	3	0	0	6
N-benzyl feranyl fentanyl	3	0	0	0	3
Para-fluoroisobutyrylfentanyl	15	3	0	0	18
Valerylfentanyl	1	8	1	2	12
Total	782	1252	1693	2344	6071

The vast majority of cases involving fentanyl involve multiple items (primarily pills, individual packets of powder, etc.), most of which have a cumulative item weight lower than the current threshold of 10g. For these cases, generally 1-2 items (pill, packet etc.) proceed through the full analytical testing procedure and reported. Adding additional thresholds at 3g and 6g (and for larger cases, 25g), increases the number of items that will require full analytical testing and reporting.

- o Example Case A has 35 pills each weighing 0.1g. The estimated full weight would be 3.5g.
- o Current language: **Three of the 35 items** would need to be tested and reported under current statute. This would reach the 0.25g threshold to exceed the gross misdemeanor charge but would not be enough to meet the 10g threshold 3rd possession.
- o HF0615-0 language: With the new thresholds of 3g and 6g, we would test enough items to meet the highest possible threshold, which in this case, would be 3g. At least 30 of the 35 items would need to be tested and reported. Even using a statistical sampling plan, **more than 15 items** would need to be tested.
- o The new language would require at least 5 times the work for this example case.

The BCA FSS conducted an assessment of cases received between 2018 and 2022 that tested positive for fentanyl (and related compounds). In 2022, the BCA FSS tested approximately 112 cases per month with over 2,300 items of evidence identified as containing fentanyl (and related compounds). 70% involved overall estimated weights within the range of 0.05g-10g, the majority of which fell within the 0.05g 3g range. Using a conservative estimate of an average of three times the work needed per case, the increase in testing needed to reach the new thresholds (logic is explained in the previous bullet and example) is estimated to be an additional 650 items requiring analysis per month assuming statistical sampling is applied. The estimated increase in workload (cases per month) is 128 which is the workload of an additional 3 FTEs.

The increase in laboratory testing needed to test relevant cases to the new thresholds at 3g and 6g described above is estimated to be equivalent to the caseload of three additional scientists. An additional cost for equipment and training for the additional staff would also be required.

The additional FTEs would require training and continuing education along with a one-time purchase of equipment (including computers, software, and laboratory items).

Expenditure and/or Revenue Formula

The estimated cost per FTE (salary plus fringe) for FY24 and FY25 is \$119,000 and \$122,000 respectively. This totals \$357,000 for FY24 and \$366,000 in FY25 and ongoing.

Revised

Training and continuing education for additional staff = \$5,000 annually

The increase in caseload and staff would require additional analytical and testing equipment as well as balances for weighing and computers/software for the additional staff. The estimated additional equipment funding is a one-time amount of \$45,000 in FY24.

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

Agency Contact: Olivia Anderson 651-793-2713

Agency Fiscal Note Coordinator Signature: Dan Boytim

Phone: 651-201-7040

Date: 3/20/2023 2:04:15 PM

Email: Dan.Boytim@state.mn.us