

**Consolidated Fiscal Note**

**2021-2022 Legislative Session**

**SF1279 - 0 - Fentanyl and Heroin Penalty Weighted the Same**

Chief Author: **Julie Rosen**  
 Committee: **Judiciary And Public Safety Finance And Policy**  
 Date Completed: **3/11/2021 9:46:38 AM**  
 Lead Agency: **Corrections Dept**  
 Other Agencies:  
     Public Defense Board      Sentencing Guidelines Comm  
     Supreme Court

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	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Corrections Dept</b>						
<b>General Fund</b>	-	9	15	25	42	
<b>State Total</b>						
<b>General Fund</b>	-	9	15	25	42	
	<b>Total</b>	<b>-</b>	<b>9</b>	<b>15</b>	<b>25</b>	<b>42</b>
	<b>Biennial Total</b>			<b>24</b>		<b>67</b>

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Corrections Dept</b>					
General Fund	-	.1	.2	.3	.5
	<b>Total</b>	<b>-</b>	<b>.1</b>	<b>.2</b>	<b>.5</b>

**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.

**LBO Signature:** Maren Bardal      **Date:** 3/11/2021 9:46:38 AM  
**Phone:** 651-284-6429      **Email:** maren.bardal@lbo.leg.mn

**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.

<b>State Cost (Savings) = 1-2</b>	<b>Biennium</b>			<b>Biennium</b>	
Dollars in Thousands	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
<b>Corrections Dept</b>					
General Fund	-	9	15	25	42
<b>Total</b>	<b>-</b>	<b>9</b>	<b>15</b>	<b>25</b>	<b>42</b>
<b>Biennial Total</b>			<b>24</b>		<b>67</b>
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>					
Corrections Dept					
General Fund	-	9	15	25	42
<b>Total</b>	<b>-</b>	<b>9</b>	<b>15</b>	<b>25</b>	<b>42</b>
<b>Biennial Total</b>			<b>24</b>		<b>67</b>
<b>2 - Revenues, Transfers In*</b>					
Corrections Dept					
General Fund	-	-	-	-	-
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Biennial Total</b>			<b>-</b>		<b>-</b>

**Fiscal Note**

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Chief Author: **Julie Rosen**  
 Committee: **Judiciary And Public Safety Finance And Policy**  
 Date Completed: **3/11/2021 9:46:38 AM**  
 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)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	9	15	25	42	
<b>Total</b>	<b>-</b>	<b>9</b>	<b>15</b>	<b>25</b>	<b>42</b>	
<b>Biennial Total</b>			<b>24</b>		<b>67</b>	

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	.1	.2	.3	.5
<b>Total</b>	<b>-</b>	<b>.1</b>	<b>.2</b>	<b>.3</b>	<b>.5</b>

**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:** Maren Bardal    **Date:** 3/8/2021 12:46:00 PM  
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**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.

<b>State Cost (Savings) = 1-2</b>		<b>Biennium</b>			<b>Biennium</b>	
Dollars in Thousands		<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
General Fund	-	9	15	25	42	
<b>Total</b>	<b>-</b>	<b>9</b>	<b>15</b>	<b>25</b>	<b>42</b>	
	<b>Biennial Total</b>		<b>24</b>	<b>67</b>		
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
General Fund	-	9	15	25	42	
<b>Total</b>	<b>-</b>	<b>9</b>	<b>15</b>	<b>25</b>	<b>42</b>	
	<b>Biennial Total</b>		<b>24</b>	<b>67</b>		
<b>2 - Revenues, Transfers In*</b>						
General Fund	-	-	-	-	-	-
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
	<b>Biennial Total</b>		<b>-</b>	<b>-</b>		

**Bill Description**

The proposed legislation would assign the same weight and penalty thresholds for fentanyl as is for heroin, with respect to Controlled Substance Crime 1st Degree, 2nd Degree and 5th Degree.

**Assumptions**

The Minnesota Sentencing Guidelines Commission (MSGC) estimates two of eight felony-level fentanyl cases sentenced in 2019 would be sentenced under a higher severity level, and one gross misdemeanor fentanyl case sentence in 2019 could become a felony offense under the provisions of this bill.

The MSGC estimates the provisions of this bill would result in a need for 6 additional prison beds per year. The year-by-year estimated prison bed impact would be 1 bed in FY2022, 1 bed in FY2023, 2 beds in FY2024, 3 beds in FY2025, 4 beds in FY2026, 5 beds in FY2027 and 6 beds in FY2028 and each subsequent year.

Prison bed costs are based on a marginal cost per diem of \$40.75 for FY2022, \$41.59 for FY2023, \$42.50 for FY2024, and \$43.47 for FY2025. 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.

There would be minimal impact on supervision caseloads statewide, however the accumulative effect could be significant as new offenses or penalty enhancements are enacted.

This bill would be effective the day following final enactment and would apply to crimes committed on or after that date.

**Expenditure and/or Revenue Formula**

Costs for Prison Beds - DOC

Fiscal Year	2021	2022	2023	2024	2025
Number of Prison Beds	0	1	1	2	3
Cost of Prison Beds (in 000s)	\$0	\$9	\$15	\$25	\$42
FTEs	0	0.1	0.2	0.3	0.5

**Long-Term Fiscal Considerations**

Estimated prison bed costs would increase to \$95,000 in FY2029 and continue into subsequent years.

**Local Fiscal Impact**

The impact on local correctional resources statewide as a result of this bill would be minimal.

**References/Sources**

Minnesota Sentencing Guidelines Commission

Department of Corrections staff

**Agency Contact:** Karen Juneski (651-361-7259)

**Agency Fiscal Note Coordinator Signature:** Chris Dodge

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**Date:** 3/8/2021 12:24:42 PM

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**Fiscal Note**

**2021-2022 Legislative Session**

**SF1279 - 0 - Fentanyl and Heroin Penalty Weighted the Same**

Chief Author: **Julie Rosen**  
 Committee: **Judiciary And Public Safety Finance And Policy**  
 Date Completed: **3/11/2021 9:46:38 AM**  
 Agency: **Public Defense Board**

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.

<b>State Cost (Savings)</b>	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

<b>Full Time Equivalent Positions (FTE)</b>	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-	-

**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:** Maren Bardal    **Date:** 3/11/2021 9:44:21 AM  
**Phone:** 651-284-6429    **Email:** maren.bardal@lbo.leg.mn

**State Cost (Savings) Calculation Details**

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

<b>State Cost (Savings) = 1-2</b>		Biennium			Biennium	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025	
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>2 - Revenues, Transfers In*</b>						
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

**Bill Description**

The bill would provide that fentanyl be weighted the same as heroin in the controlled substance statutes

**Assumptions**

It is not anticipated that this bill will have an impact on the number of case filings, instead it will change the level of offense of those involving fentanyl. Any fiscal impact is assumed to be minimal."

**Expenditure and/or Revenue Formula**

**Long-Term Fiscal Considerations**

**Local Fiscal Impact**

**References/Sources**

**Agency Contact:**

**Agency Fiscal Note Coordinator Signature:** Kevin Kajer

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**Fiscal Note**

**2021-2022 Legislative Session**

**SF1279 - 0 - Fentanyl and Heroin Penalty Weighted the Same**

Chief Author: **Julie Rosen**  
 Committee: **Judiciary And Public Safety Finance And Policy**  
 Date Completed: **3/11/2021 9:46:38 AM**  
 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

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State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-

**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:** Maren Bardal    **Date:** 3/8/2021 7:47:48 AM  
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\*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2 Dollars in Thousands	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-
<b>Biennial Total</b>			-		-
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>					
<b>Total</b>	-	-	-	-	-
<b>Biennial Total</b>			-		-
<b>2 - Revenues, Transfers In*</b>					
<b>Total</b>	-	-	-	-	-
<b>Biennial Total</b>			-		-

**Bill Description**

With respect to Controlled Substance Crime 1st Degree, 2nd Degree, and 5th Degree, this bill assigns heroin’s weight and penalty thresholds to fentanyl by inserting the words “or fentanyl” or “fentanyl” after each appearance of “heroin” in Minn. Stat. §§ 152.021, 152.022, and 152.025.

The bill is effective the day following final enactment and applies to crimes committed on or after that date.

**Assumptions**

Although the bill’s title claims that the bill “provid[es] the same weight threshold and penalty for fentanyl as is for heroin,” the bill does not amend Minn. Stat. § 152.023. It is therefore assumed that the heroin possession thresholds within Controlled Substance Crime 3rd Degree do not apply to fentanyl.

It is assumed that the bill’s new thresholds for fentanyl are as shown in Table 1.

Table 1. New Fentanyl Thresholds, SF1279, as Introduced.

Controlled Substance Crime	New Fentanyl Threshold
1st Degree Sale	10 g or more
1st Degree Possession	25 g or more
2nd Degree Sale	3 g or more
2nd Degree Possession	6 g or more
5th Degree Gross Misd.	less than 0.05 g

It is assumed that future sales and possessions of fentanyl will be like controlled substance crimes sentenced in 2019 known to have involved fentanyl, assuming the accuracy of drug types and quantities alleged on criminal complaints. (Only those complaints with a Minnesota Offense Code suggesting the presence of synthetic narcotics were reviewed by MSGC staff.) It is assumed that sentences for sale of less than 3 grams of fentanyl will remain unaltered by the bill. It is assumed that sentences for possession of less than 6 grams of fentanyl will remain unaltered by the bill, except that possession of between 0.05 grams (50 milligrams) and 0.25 grams (250 milligrams) (the existing gross misdemeanor threshold) of fentanyl will become a felony rather than a gross misdemeanor. Among fentanyl sale offenses involving 3 grams or more, and among fentanyl possession offenses involving 6 grams or more, it is assumed that the offenses will, in the future, be sentenced according to the Sentencing Guidelines recommendation at the degree appropriate to the new fentanyl threshold as shown in Table 1.

MSGC found eight felony-level fentanyl cases sentenced in 2019, two of which would be sentenced at a higher severity level under the provisions of this bill. MSGC found one gross misdemeanor fentanyl case (weight not specified) sentenced

in 2019 which might become a felony offense under the provisions of this bill. Although the weight of the fentanyl involved in the gross misdemeanor case is not known, it is assumed that the gross misdemeanor would become a felony 5th Degree Possession under the bill because of the major reduction in the quantity of fentanyl that qualifies for gross misdemeanor treatment (20% of the existing quantity).

If any gross misdemeanor fentanyl cases become felonies because of the threshold reduction for gross misdemeanors, they will become fifth-degree possession cases. Fifth-degree cases are ranked at a severity level where only offenders with a Criminal History Score of six or more are recommended prison sentences. In 2019, 14% of fifth-degree possession cases received a prison sentence (among cases not involving a firearm). Therefore, it is assumed that the small number of gross misdemeanor fentanyl cases that might become felonies as a result of this bill are unlikely to result in additional prison sentences.

### **Expenditure and/or Revenue Formula**

NA

### **Long-Term Fiscal Considerations**

It is estimated that if the change in thresholds for fentanyl offenses in this bill were adopted, it would result in the need for of 6 additional prison beds a year. One bed would be needed in FY2022 and FY2023, two beds in FY2024, three beds in FY2025, four beds in FY2026, five beds in FY2027, and 6 beds in FY2028 and every year after.

### **Local Fiscal Impact**

No impact estimated on local correctional resources.

### **References/Sources**

2019 MSGC Monitoring Data.

2019 MJB data.

### **Agency Contact:**

**Agency Fiscal Note Coordinator Signature:** Jill Payne

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**Date:** 3/5/2021 2:49:15 PM

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**Fiscal Note**

**2021-2022 Legislative Session**

**SF1279 - 0 - Fentanyl and Heroin Penalty Weighted the Same**

Chief Author: **Julie Rosen**  
 Committee: **Judiciary And Public Safety Finance And Policy**  
 Date Completed: **3/11/2021 9:46:38 AM**  
 Agency: **Supreme Court**

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

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	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-	-

**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:** Maren Bardal    **Date:** 3/10/2021 6:29:04 PM  
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<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>2 - Revenues, Transfers In*</b>						
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

**Bill Description**

SF1279 amends sections 152.021 (First Degree Controlled Substance Crime) and 152.022 (Second Degree Controlled Substance Crime), at subdivisions 1 (sale) and 2 (possession), and section 152.025, subdivision 4 (Fifth Degree Controlled Substance Crime) to add references to fentanyl to the provisions governing heroin.

**Assumptions**

It is assumed that the provisions of this bill will not result in new criminal case filings as no new crimes are created, and will instead impact the level of offense and sentences imposed for existing controlled substance crimes involving fentanyl.

**Expenditure and/or Revenue Formula**

The bill is not anticipated to have a significant fiscal impact on the judicial branch.

**Long-Term Fiscal Considerations**

None

**Local Fiscal Impact**

None

**References/Sources**

**Agency Contact:**

**Agency Fiscal Note Coordinator Signature:** Janet Marshall

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