

FISCAL NOTE
Requested by Legislative Council
03/23/2017

Amendment to: HB 1041

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$0	\$1,532,785	\$0	\$1,862,706
Expenditures			\$(1,989,272)	\$1,532,785	\$(2,818,444)	\$1,862,706
Appropriations			\$110,916	\$1,532,785	\$122,292	\$1,862,706

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Relates to probation, medical parole, grading of offenses, sentence reduction, treatment and counseling services, access to nutrition assistance program, and creation of pretrial services pilot program.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

See attached document

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The Department of Human Services would receive \$1,532,785 of federal SNAP revenue in the 17-19 biennium and \$1,862,706 of federal SNAP revenue in the 19-21 biennium.
 See attached document

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Department of Corrections and Rehabilitation - NOTE that estimated fiscal impact is determined based on estimated expenditures to provide housing, meals, and medical care for 1,973 inmates for the 2017-19 biennium and 2,247 inmates for the 2019-21 biennium. The 2017-19 estimated fiscal impact is NOT based on either the 2017-19 DOCR base budget or the revised executive recommendation.

2017-19 Adult Services - (\$2,100,188) - 100% General Funds
 2019-21 Adult Services - (\$2,940,736) - 100% General Funds

In the 17-19 biennium the Department of Human Services would incur additional grant expenditures of \$1,643,701, of which, \$110,916 would be general fund, to provide SNAP and TANF benefits to individuals convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. For the 19-21 biennium an increase of \$1,984,998 in grant expenditures, of which \$122,292 is general fund, is anticipated.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Department of Corrections and Rehabilitation - Appropriation levels in both the base budget and the revised executive recommendation are under funded to a greater degree than the sum of the calculated savings.

Section 19 provides the Department of Human Service with a total appropriation of \$1,643,701, of which, \$110,916 would be general funds, and \$1,532,785 are federal funds to implement Sections 15 and 16. For the 19-21 biennium an appropriation increase of \$1,984,998, of which \$122,292 is general fund would be needed.

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To follow is analysis for the fiscal notes relating to HB 1041.

Section 1: Moves the authority to establish criteria and administer good time in correctional facilities (county) from the presiding judge of the judicial district where the facility is located to the correctional facility administrator.

No fiscal impact to the DOCR.

Per the ND Association of Counties fiscal impact to counties will be minimal.

Section 2 and 6: Sections 2 and 6 should be looked at together. Section 2 authorizes the DOCR to credit an individual sentence reduction for time spent in custody before sentencing to the legal and physical custody of the DOCR and affirms current law which does not allow for crediting time spent on probation supervision towards incarceration. Section 6 authorizes the court to award sentence reduction of up to five days per month when establishing the jail time to be credited.

Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$411,267) and for 2019-21 biennium is (\$894,082). The fiscal impact assumes an average of 15 days will be credited to all new arrivals as of 7/1/16. Adoption of these sections will reduce the estimated average daily population by 6 for the 2017-19 biennium, and by 14 for the 2019-21 biennium.

Section 3: Revises the current emergency parole law to more specifically medical parole for serious or terminal medical conditions and authorizes the board to grant a medical parole for individuals subject to the mandatory armed offender law and those sentenced to life and must serve a minimum of 30 years less performance based sentence reduction. This will impact an estimated one to two individuals per year. Although the number of individuals this impacts is miniscule, there may be very high costs associated with medical care for serious medical cases and end-of-life needs as well as a humane aspect that cannot be overlooked.

Due to the variability, uncertainty, and unique circumstances surrounding the necessary medical care specific to each individual case, estimating a specific fiscal impact is impractical and could be misleading.

Section 4: Updates mandated domestic violence treatment to include an evaluation and treatment program as determined by the court.

No fiscal impact to the DOCR.

Section 5: Removes the blanket inclusion for automobiles, aircraft or other motor propelled vehicles. If stolen, individual may still be charged as a C felony and the state would have to prove the value vehicle to be more than one thousand dollars.

Not able to estimate fiscal impact, if any, to the DOCR.

Section 7: Adds the following sanction, as a condition of probation, to the list of available intermediate measures for persons on probation with the DOCR;

One period of incarceration during a period of probation not to exceed thirty consecutive days in lieu of a petition for revocation of probation.

Due to the variability, uncertainty, and unique circumstances surrounding the application of intermediate sanctions, estimating a specific fiscal impact is impractical and could be misleading.

Section 8: When the court sentences an individual for a class C felony offense or an A misdemeanor it is presumed at the time of initial sentencing that the defendant is to be sentenced to probation unless the offense is excluded from presumptive probation. Offenses excluded from presumptive probation include the following:

NDCC 12.1-06.2 – Any criminal street gang related crime

NDCC 12.1-08 - Obstruction, preventing arrest, hindering law enforcement, aiding in the consummation of a crime, bail jumping, escape, inciting or leading a riot in a correctional facility, introducing or possessing escape contraband, harboring a runaway and refusing to halt.

NDCC 12.1-09 - Tampering with a witness, informant or evidence, harassment of or communicating with jurors and eavesdropping on jury deliberations.

NDCC 12.1-16-03 – Negligent homicide

NDCC 12.1-17 – Simple assault (includes domestic) or on a peace officer, correctional officer or employee of state hospital all acting in an official capacity, assault, aggravated assault, reckless endangerment, terrorizing, menacing, criminal coercion, harassment, stalking, distribution of intimate images without or against consent, kill or injure a law enforcement animal, hazing, contact bodily fluids.

NDCC 12.1-18 – Kidnapping, felonious restraint, unlawful imprisonment, removal of child from state in violation of custody decree.

NDCC 12.1-22 – Robbery, criminal trespass, unlawful entry into a vehicle, stowing away.

NDCC 12.1-23-02.1 – Disarming or attempting to disarm a law enforcement officer.

NDCC 12.1-25 – Inciting a riot, arming rioters.

NDCC 12.1-32-15 – All registerable sex offenses and registration as a felony offender against children.

NDCC 12.1-36 – Female genital mutilation

NDCC 14-07.1-06 – Violation of a [domestic violence] protection order

In addition the exclusion from presumptive probation also includes any of the above offenses where there was attempt, accomplice to the offense or conspiracy to commit the offense, any offense involving an attempt to commit an offense involving a firearm or dangerous weapon or serving as an accomplice or conspirator to commit an offense involving a firearm or dangerous weapon, and lastly, any offense that includes a mandatory term of incarceration.

The court can also depart from the presumption if there are aggravating factors to justify a departure and those factors are made a part of the record at the time of sentencing. Aggravating factors include:

Any prior plea or finding of guilt of a class A misdemeanor or felony offense

The age and vulnerability of the victim or the abuse of trust

Threats or coercion in the commission of the offense

Section 8 does not preclude the court from deferring imposition of sentence or imposing a term of incarceration with credit for time spent in custody, so long as the execution of the sentence is suspended.

Estimated fiscal impact to the DOCR for the 2017-19 biennium is (\$1,104,616) and for the 2019-21 biennium is (\$1,368,750). Adoption of these sections will reduce the estimated average daily population by 22 for the 2017-19 biennium and by 25 for the 2019-21 biennium.

Sections 9: Reduces the penalty for ingestion of a controlled substance from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense.

No fiscal impact to the DOCR.

Per the ND Association of Counties fiscal impact to counties will be minimal.

Section 10: Reduces the penalty for ingestion of a controlled substance analog from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense. This has no financial impact on the DOCR. It may have some city and county implications because the B misdemeanor could be addressed in municipal court.

No fiscal impact to the DOCR.

Per the ND Association of Counties fiscal impact to counties will be minimal.

Section 11: Reduces possession of a controlled substance or possession of a controlled substance analog from a class C felony to a class A misdemeanor and penalty enhancement provision from one thousand feet of a school to on the real property of a school.

It would also authorize the DOCR to release an individual from incarceration to a probation period upon the individual's successful completion of a drug and alcohol treatment program. It also clarifies manufacture, delivery and intent to deliver for purposes of offenses under this chapter.

Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$427,489) and for 2019-21 biennium is (\$500,169). Adoption of this section will reduce the estimated average daily population by 8 for the 2017-19 biennium, and by 9 for the 2019-21 biennium.

Section 12: Reduces the distance for penalty enhancement for manufacture, delivery or possession with intent to manufacture or deliver a controlled substance from one thousand feet of a child care or preschool facility, elementary or secondary school or college to on the real property of a child care or preschool facility, elementary or secondary school or college.

No fiscal impact to the DOCR.

Section 13: Reduces possession of drug paraphernalia from a C felony to an A misdemeanor and marijuana paraphernalia from an A misdemeanor to a B misdemeanor. This may impact the DOCR in two ways. First, individuals convicted of a C felony drug paraphernalia are eligible for up to three years of supervised probation on initial sentence and up to a total of five years upon revocation. Individuals convicted of an A misdemeanor are eligible for up to two years of supervised probation and up to a total of three years upon revocation. This would reduce the eligible time for supervision upon initial sentence and by revocation by one year each. It would also reduce the maximum incarceration penalty from five years to one year. This change may also reduce impact on states attorneys, indigent defense counsel, jails and the courts. Misdemeanor offenses can have bail set by a bond schedule rather than having to make an appearance before the court, preliminary hearings are not required and indigent defense counsel may not be necessary if incarceration is not being considered as part of the sentence. Any fiscal implications to the aforementioned groups would have to be addressed by them.

Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$156,816) and for 2019-21 biennium is (\$177,735). Adoption of this section will reduce the estimated average daily population by 3 for the 2017-19 biennium, and by 3 for the 2019-21 biennium.

Section 14: This section will allow the court to terminate probation when the individual completes a drug court program. This change is driven by the current DUI law which mandates a penalty of a minimum amount of time for supervised probation in the case of an A misdemeanor of one year and two years for a C felony.

No fiscal impact to the DOCR.

Section 15: Per the ND Department of Human Services:

Estimated fiscal impact of \$1,532,785, of which all is federal funds, due to the Department of Human Services not denying SNAP benefits to those who have been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. It is estimated for the 17-19 biennium approximately 450 additional individuals would receive SNAP benefits each month. The estimated individuals for the 19-21 biennium is approximately 496 at an estimated cost of \$1,862,706, of which all would be federal funds.

Section 16: Per the ND Department of Human Services:

Estimated fiscal impact of \$110,916, of which all is general fund, due to the Department of Human Services not denying TANF benefits to those who have been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. It is estimated for the 17-19 biennium approximately 20 additional individuals would receive TANF benefits each month. The estimated individuals for the 19-21 biennium is approximately 22 at an estimated cost of \$122,292, of which all would be general fund.

Section 17: Authorizes a pretrial services project that may reduce the number of people held in jail on bond; thereby, freeing up limited jail space.

DOCR will provide appropriate training and technical assistance within approved agency appropriations.