

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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**FISCAL IMPACT STATEMENT**

**LS 6672**

**BILL NUMBER:** SB 122

**NOTE PREPARED:** Mar 15, 2021

**BILL AMENDED:**

**SUBJECT:** Drug Schedules.

**FIRST AUTHOR:** Sen. Young M

**FIRST SPONSOR:** Rep. McNamara

**BILL STATUS:** 2<sup>nd</sup> Reading - 2<sup>nd</sup> House

**FUNDS AFFECTED:**  GENERAL  
 DEDICATED  
 FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** This bill adds new scheduled drugs to the statutory drug schedules.

**Effective Date:** July 1, 2021.

**Explanation of State Expenditures:** This bill adds Isotonitazene, MDMB-4en-PINACA and 4F-MDMB-BICA to Schedule I drugs. It removes Epidiolex from the list of schedule V drugs. This would likely have a minor increase on DOC's offender population.

Isotonitazene is an opioid and both MDMB-4en-PINACA and 4F-MDMB-BICA are synthetic cannabinoids. All three would be classified as Schedule I drugs.

Epidiolex is an FDA-approved prescription CBD used to treat seizures.

The penalties for illegally possessing and dealing in a Schedule I drugs are shown in the following tables.

<b>Criminal Penalties for Illegally Possessing Schedule Drugs</b>		
	<u>Simple Possession</u>	<u>With Enhancing Circumstance</u>
Schedule I, II, III, IV	Class A misdemeanor	Level 6 felony

<b>Criminal Penalties for Dealing in Schedule I, II and III Drugs</b>	
Less than one gram	Level 6 felony
Between 1 and 5 grams	Level 5 felony
Less than 1 gram With Enhancing Circumstance	Level 5 felony
Between 5 and 10 grams	Level 4 felony
Between 1 and 5 grams With Enhancing Circumstance	Level 4 felony
Between 10 and 28 grams	Level 3 felony
Between 5 and 10 grams With Enhancing Circumstance	Level 3 felony
More than 28 grams	Level 2 felony
More than 10 grams With Enhancing Circumstance	Level 2 felony

Additional Information – IC 35-48-1-16.5 defines "Enhancing circumstance" as one or more of the following:

1. The person has a prior conviction, in any jurisdiction, for dealing in a controlled substance that is not marijuana, hashish, hash oil, salvia divinorum, or a synthetic drug, including an attempt or conspiracy to commit the offense.
2. The person committed the offense while in possession of a firearm.
3. The person committed the offense: on a school bus; or in, on, or within 500 feet of school property while a person younger than 18 was reasonably expected to be present; or a public park while a person younger than 18 was reasonably expected to be present.
4. The person delivered or financed the delivery of the drug to a person younger than 18 at least 3 years junior to the person.
5. The person manufactured or financed the manufacture of the drug.
6. The person committed the offense in the physical presence of a child younger than 18, knowing that the child was present and might be able to see or hear the offense.
7. The person committed the offense on the property of a penal facility or juvenile facility.
8. The person knowingly committed the offense in, on, or within 100 feet of certain facilities at which a drug abuser may be provided treatment, care, or rehabilitation.

The following table shows the sentencing ranges for these felonies.

<b>Sentences by Felony Level</b>					
	<b>Level 2</b>	<b>Level 3</b>	<b>Level 4</b>	<b>Level 5</b>	<b>Level 6</b>
Minimum	10 years	3 years	2 years	1 year	6 months
Advisory	17.5 years	9 years	6 years	3 years	1 year
Maximum	30 years	16 years	12 years	6 years	30 months

The average expenditure to house an adult offender in a DOC facility was \$21,551 annually, or \$59 daily, during FY 2020. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is estimated at \$3,524 annually, or \$9.66 daily, per prisoner. These marginal cost estimates are based on contractual agreements with food and medical vendors and projections based on prior years for clothing and hygiene. The estimated average cost of housing a juvenile in a state juvenile facility was \$89,998 annually, or \$246.40 per day, in FY 2020. The marginal cost for juvenile facilities was \$3,969 annually or \$10.87 daily.

**Explanation of State Revenues:** There could be a minimal increase in fees and fines.

**Explanation of Local Expenditures:** More offenders may be confined in county jails prior to trial. The average cost to confine a person in a county jail is an estimated \$54 per day based on the per diem payments reported by the U.S. Marshals to house federal prisoners in 16 county jails across Indiana during Federal FY 2017.

**Explanation of Local Revenues:** There could be a minimal increase in fees and fines.

**State Agencies Affected:** Department of Correction.

**Local Agencies Affected:** County sheriffs, prosecuting attorneys, courts with criminal jurisdiction.

**Information Sources:** Department of Correction; U.S. Department of Justice, US Marshals Service.

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