



marijuana-related charges would have been entitled to a medical marijuana defense under SB 40, but that number would represent savings to local governments for costs of their incarceration. The ultimate savings to local government resulting from a reduction in prosecutions cannot be quantified. The legislation could also result in savings to local law enforcement because it would prohibit state and local law enforcement from expending funds for enforcement of the Federal Controlled Substances Act ( 21 U.S.C. Sec. 801, et seq.).

While it is unknown how many individuals or entities would be authorized to cultivate, sell, or use medical marijuana under the provisions of the Act, given the comprehensive nature of the legislation, such activities would increase. The bill includes a requirement that qualifying persons or entities register and obtain a registry card allowing them to engage in activities that would be authorized under the act. There could be some costs and additional administrative burden to local law enforcement to verify registration validity of a person possessing a card. In addition, SB 40 includes no requirement that medical marijuana compassion centers or compliance facilities obtain a local business license, though Section 14 of the bill does require they comply with local zoning laws. Failure to require compassion centers to obtain such a license could result in a loss of revenue to local governments.

Possession and cultivation of marijuana other than in compliance with SB 40 would remain illegal.

SB 40 would allow local governments to enact ordinances imposing time, place, and manner restrictions on the operation of “registered compassion centers,” and “registered safety compliance facilities,” but could not prohibit their operation. This provision could result in some additional cost to local government in enactment and enforcement of these ordinances.

The legislation would prohibit possessing or engaging in the medical use of marijuana in any correctional facility and would create a new misdemeanor punishable by up to 180 days in jail and a \$1,000 fine for a breach of confidentiality of information obtained pursuant to the provisions of the Act. Local governments are responsible for the cost of incarcerating those convicted or who don’t make bail when charged with a Class B or Class A misdemeanor. A person convicted of a Class B misdemeanor or a Class A misdemeanor can be incarcerated respectively for up to 90 days or one year in one of Kentucky’s 78 jails. While the expense of housing inmates may vary widely by jail, **each additional inmate will increase facility costs by an estimated average of \$31.34 per day.**

Marijuana cultivation, sale, and possession are all illegal under the Federal Controlled Substances Act (21 U.S.C. Sec. 801, et seq.). However, the Obama Administration has taken various positions on enforcement. According to the National Conference of State Legislatures, in October of 2009 the Administration sent a memo to federal prosecutors encouraging them not to prosecute people who distribute marijuana for medical purposes in accordance with state law. In 2011, the Drug Enforcement Administration stated that

marijuana had no valid medical purpose. Furthermore, the DEA would continue to target “criminals engaged in the cultivation and trafficking of marijuana,” even in states that have approved the use of “medical” marijuana. (U.S. Department of Justice, Drug Enforcement Administration, “*The DEA Position on Marijuana*,” (2011) p.2). On August 29, 2013 the federal government revised its policy and issued a Memorandum titled “Guidance Regarding Marijuana Enforcement,” setting forth the federal government’s eight enforcement priorities including, preventing: distribution of marijuana to minors, the use of violence in furtherance of the cultivation and distribution of marijuana, and drugged driving. These priorities did not historically include prosecuting individuals for possession of small amounts of marijuana for personal use on private property. States that permit marijuana production, distribution, and possession should create effective regulatory and enforcement schemes to address public safety, public health, and other law enforcement interests. If a state’s efforts are insufficiently robust, the federal government may challenge the regulatory scheme itself in addition to increasing federal criminal prosecutions.

**Data Source(s):** Administrative Office of the Courts; Department of Corrections; National Conference of State Legislatures; U.S. Dept. of Justice; LRC staff, Kentucky League of Cities

**Preparer:** Mary Stephens      **Reviewer:** MCY      **Date:** 2/18/15