

# CORRECTIONS IMPACT STATEMENT

SESSION: 18RS

BILL #: SB 80 Introduced

BR #: 906

DOC ID#: XXXX

**BILL SPONSOR(S):** Sen. D. Seum **AMENDMENT SPONSOR(S):**

**SUBJECT:** AN ACT relating to the regulation of cannabis.

**SUMMARY OF LEGISLATION:** Establish and create new sections of KRS Chapter 245 to define terms, allow for possession, growth, use, processing, purchasing, transfer, and consumption of cannabis; establish limits for transfer; allow for purchasing and manufacture of cannabis accessories; authorize activities and operation of retail stores, consumption establishments, cultivation facilities, cannabis testing facilities, and product manufacturing facilities; prohibit smoking cannabis in public and establish a fine for violation; prohibit operation of motor vehicles while consuming cannabis and specify that existing intoxication laws are not superseded; prohibit state or local resources to be used to investigate violations of federal Controlled Substances Act that conflict with this KRS Chapter 245; specify that an employer is not required to allow consumption, workplace intoxication, possession, or transfer of cannabis; prohibit individuals under the age of 21 from entering cannabis establishments, purchasing, using, or misrepresenting his or her age; establish penalties for violation; establish a penalty for underage possession of cannabis; establish a penalty for underage cultivation of cannabis; establish requirements for personal cultivation; establish and direct the Department for Cannabis Enforcement to administrate KRS Chapter 245 and promulgate administrative regulations relating to all aspects of cannabis establishments, cannabis manufacturing, and transfer, cultivation, packaging, and health and safety requirements; restrictions on advertising, and restrictions on additives, pesticides, visitor logs, and sample testing; require promulgation of administrative regulations within 180 days; establish timeframes for the issuance of licenses; establish a licensure requirement and separate licenses; establish a license and renewal fee and license application form; establish an excise tax on cultivation facilities, processing facilities, or retail facilities; establish a trust and agency account; establish a cannabis regulation fund and recommend the direction of certain funds; establish a civil penalty for violating KRS Chapter 245, including for failing to keep written records and submitting required reports; establish a prioritization requirement for Kentucky residents; establish the legislative intent that cannabis or cannabis products not in conformity with KRS Chapter 245 are seizable as contraband; allow for local governments to prohibit the operation of cannabis businesses; establish a new section of KRS Chapter 138 to establish excise taxes; establish a new section of KRS Chapter 139 to direct the placement of excise taxes and sales taxes relating to cannabis; amend KRS 2.015 to make the cultivation, purchase, use, and possession of cannabis a higher age of majority activity; amend KRS 610.010 to make cannabis offenses under KRS Chapter 245 committed by minors under the authority of the juvenile session of the District Court; amend KRS 630.020 to grant a court jurisdiction over cannabis offenses committed by children; amend KRS 630.120 to prohibit commitment of children over a cannabis offense; amend KRS 218A.1422 to clarify that a person is guilty of possession of marijuana when he or she has more than the possession limit established in KRS Chapter 245, and to exempt a cannabis establishment; amend KRS 218A.1423 to prohibit cultivation of more than 5 marijuana plants and to exempt cannabis establishments; amend KRS 12.020 to reflect the establishment of the Department for Cannabis Enforcement; amend KRS 12.252 to reflect the establishment of the Department for Cannabis Enforcement; establish a short title.

This  bill  amendment  committee substitute is expected to:

Have the following Corrections impact  Have no Corrections impact

- |   |   |
|---|---|
| <input type="checkbox"/> Creates new crime(s)   | <input type="checkbox"/> Repeals existing crime(s)                          |
| <input type="checkbox"/> Increases penalty for existing crime(s)                      | <input checked="" type="checkbox"/> Decreases penalty for existing crime(s) |
| <input type="checkbox"/> Increases incarceration                                      | <input checked="" type="checkbox"/> Decreases incarceration                 |
| <input type="checkbox"/> Reduces inmate/offender services                             | <input type="checkbox"/> Increases inmate/offender services                 |
| <input type="checkbox"/> Increases staff time or positions                            | <input type="checkbox"/> Reduces staff time or positions                    |
| <input checked="" type="checkbox"/> Changes elements of offense for existing crime(s) |   |
| <input type="checkbox"/> Otherwise impacts incarceration (Explain) _____              |   |

**STATE IMPACT:** Class A, B & C felonies are based on an average daily prison rate of \$70.12. Most Class D felons are housed in one of 76 full service jails for up to 5 years. DOC's cost to incarcerate a felony inmate in a jail is \$31.45 per day (includes jail per diem, medical & central office costs), not including substance abuse treatment. Projections are based on the daily rate x 365 x number of years.

**Projected Impact:**  NONE  MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

Section 2 of the Cannabis Control Act would allow a person age twenty-one (21) or older to lawfully possess, consume, grow, cultivate, use, process, purchase, or transport defined amounts of cannabis. The legislation sets the possession limit as up to one (1) ounce of cannabis in plant form, five (5) grams of concentrated cannabis, a limited amount of cannabis products, five (5) cannabis plants, and any cannabis produced by the lawfully possessed plants. Transferring cannabis is similarly limited, though restricted to three (3) immature cannabis plants. Additionally, the bill allows consumption of cannabis on private or rented property with permission from the owner or lessee.

Under the legislation, being age twenty-one (21) or older, it would no longer be unlawful to manufacture, possess, or purchase cannabis accessories, or distribute or sell cannabis accessories to a person aged twenty-one (21) or older. The bill goes on to

specify approved functions for a retail cannabis store, cannabis cultivation facility, product manufacturing facility, and cannabis testing facility.

Section 3 establishes the violation of smoking cannabis in a public place as subject to a \$100 fine. Section 4 prohibits cannabis consumption when operating or driving a motor vehicle or other conveyance, subject to a fine of \$200 and/or driver's license suspension for six (6) months for the first violation, and a \$500 fine and/or one (1) year driver's license suspension for the second and subsequent violations. This section does not preclude penalties for driving while intoxicated. Sections 5 speaks to law enforcement and employer monitoring.

Section 6 restricts minors under the age of twenty-one (21) from purchasing, or using cannabis. No person shall aid the minor by purchasing or serving cannabis. The minor shall not misrepresent their age or use false identification. If under the age of eighteen (18), violations are deemed a status offense subject to juvenile court. If over the age of eighteen (18), these shall be Class B misdemeanor offenses. A person between the age of eighteen (18) and twenty-one (21) may enter a cannabis establishment for contract work or official government duties.

Section 7 imposes a penalty of \$100 fine for an underaged individual knowingly and unlawfully possessing cannabis. Section 8 establishes a Class B misdemeanor for a minor who knowingly and unlawfully cultivates cannabis. Section 9 imposes a \$500 fine for unlawful consumption of cannabis, allowing a minor unlawful access to cannabis, and failure to keep cannabis cultivation from public view.

Sections 10, 27-28 establishes the Department of Cannabis Enforcement. Sections 11-13 speak to licensure and application procedures, with specified fines. Section 14 speaks to seizure, forfeiture and disposal. Sections 15-19 cover regulations and taxes. Section 20 refers to the age of majority. Sections 21-23 reference cannabis offenses under juvenile court jurisdiction.

Section 24 redefines Trafficking in Marijuana to amounts more than the possession limit. Trafficking in Marijuana ranges from a Class A misdemeanor to a Class B felony depending on the amount and offense number. Section 25 brings Possession of Marijuana, a Class B misdemeanor, in alignment with the possession limit. Section 26 re-aligns Marijuana Cultivation, moving the 1st Offense from a Class D felony for a Class A misdemeanor and the 2nd or Subsequent Offense from a Class C to a Class D felony.

One thousand twelve (1,212) community offenders have convictions for felony Trafficking in Marijuana and 516 have convictions for felony Cultivating Marijuana.

For offenders who are currently incarcerated, 314 offenders are serving on Trafficking in Marijuana and eighty-three (83) offenders are serving on Cultivating Marijuana.

If SB 80 were in effect at the time of their sentencing, the seventy (77) offenders currently incarcerated for Class D felony Cultivate in Marijuana would instead be serving at the county level as a Class A misdemeanor. At a cost to incarcerate of \$11,480.80 per year, the savings to the state would be significant. Note: offenders may be incarcerated on other charges. If 10% were sentenced under SB 80 and eligible for service of the sentence as a county inmate, the savings would be \$88,402.16 for a one year sentence.

In addition, the six (6) Class C felony Cultivate in Marijuana offenders would be reduced from a Class C to a Class D felony, saving \$14,133.64 annually in incarceration costs for each offender.

This bill would reduce costs associated with incarceration as offenders would qualify for lower cultivation charges. Certain offenses would be prosecuted as a misdemeanor offense rather than a felony.

A Class D Felony sentence is 1 to 5 years.	10 Class D Felons cost KY \$114,808 to \$574,040
1 Class D Felon costs KY \$11,481 to \$57,404	100 Class D Felons cost KY \$1.1M to \$5.7M

**LOCAL IMPACT:** Local governments are responsible for the cost of incarcerating individuals charged with Class A or B misdemeanors and felony defendants until disposition of the case. While the expense varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem and medical that DOC pays jails to house felony offenders.

**Projected Impact:**       NONE                       MODERATE (< \$1 million)       SIGNIFICANT (> \$1 million)

Current data reflects a total of 2,291 misdemeanor convictions for offenders on supervision for the misdemeanor offenses of cultivating marijuana, trafficking in marijuana, or possession of marijuana.

Under current law, possession of marijuana is a Class B misdemeanor. Currently, there are 1,781 offenders on community supervision with a conviction for Possession of Marijuana.

Current data reflects forty-five (45) misdemeanor marijuana cultivation convictions for offenders under state supervision. Although the exact amount is unknown, lowering offenses from a felony level to misdemeanor has the potential to increase the number of misdemeanor offenders associated with cannabis cultivation.

This bill would produce increased incarceration costs for jails as some of the misdemeanor offenses under this legislation are, under current law, felony offenses falling under state jurisdiction. If SB 80 were enacted, these offenses would shift to county jurisdiction as misdemeanor offenders. In addition, jails would not receive the state per diem for housing these offenders.

A Class A misdemeanor is 90 days to 1 year in jail

1 Class A misdemeanor: \$2,821 to \$11,439

A Class B misdemeanor is up to 90 days in jail.

1 Class B misdemeanor: up to \$2,821

10 Class A misdemeanants: \$28,206 to \$114,391

100 Class A misdemeanants: \$282,060 to \$1,143,910

10 Class B misdemeanants: up to \$28,206

100 Class B misdemeanants: up to \$282,060

**The following offices contributed to this Corrections Impact Statement:**

Dept. of Corrections    Dept. of Kentucky State Police    Administrative Office of the Courts    Parole Board    Other

**NOTE: Consideration should be given to the cumulative impact of all bills that increase the felon population or that impose new obligations on state or local governments. The Department of Corrections and local jails continue to operate over capacity. Without steps to reduce the population, any legislation that increases population or lengthens the term of incarceration will have a significant impact on correctional operations.**

**APPROVED BY:**

  
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Commissioner, Kentucky Department of Corrections

**1/25/2018**

Date