

CORRECTIONS IMPACT STATEMENT

SESSION: 19RS BILL # HB 136 HCS 1 BR # 58 DOC ID #: HB013630.100 - 58 - 5910

BILL SPONSOR(S): Rep. D. St. Onge, J. Nemes, R. Adkins, T. Bojanowski, C. Booker, T. Branham Clark, G. Brown Jr, T. Burch, M. Cantrell, J. Donohue, L. Elkins, K. Flood, A. Gentry, J. Glenn, J. Gooch Jr., D. Graham, J. Graviss, C. Harris, M. Hart, A. Hatton, K. Hinkle, C. Howard, J. Jenkins, D. Keene, M. Koch, N. Kulkarni, M. Marzian, R. Meyer, C. Miller, J. Miller, P. Minter, R. Palumbo, R. Rand, J. Raymond, D. Schamore, J. Sims Jr, M. Sorolis, C. Stevenson, S. Westrom, B. Wheatley, R. Wiederstein, L. Willner, L. Yates **AMENDMENT SPONSOR(S):** . .

SUBJECT: AN ACT relating to medicinal marijuana and making an appropriation therefor.

SUMMARY OF LEGISLATION: Create new sections of KRS Chapter 218A to define terms; to exempt the medicinal marijuana program from existing provisions in Kentucky law to the contrary; to require the Department for Alcoholic Beverage and Cannabis Control to implement and regulate the medicinal marijuana program in Kentucky; to establish the Division of Medicinal Marijuana within the Department of Alcoholic Beverage and Cannabis Control; to establish restrictions on the possession of and cultivation for personal use of medicinal marijuana by qualifying patients, visiting patients, and designated caregivers; to establish certain protections for cardholders; to establish professional protections for practitioners; to establish professional protections for attorneys; to prohibit the possession and use of medicinal marijuana on a school bus, on the grounds of any preschool or primary or secondary school, in a correctional facility, any property of the federal government, or while operating a motor vehicle; to prohibit smoking of medicinal marijuana on public transportation, in public places, or in any place of public accommodation; to clarify that the use of medicinal marijuana by a qualifying patient or visiting qualifying patient is to be treated the same as the use of prescribed pharmaceutical medications; to establish additional protections for medicinal use; to clarify that an employer may restrict the possession and use of medicinal marijuana in the workplace; to require the department to implement and operate a registry identification card program; to establish requirements for registry identification cards; to establish registry identification card fees; to require the department to operate a provisional licensure receipt system; to establish the application requirements for a registry identification card; to clarify when the department may deny an application for a registry identification card; to establish certain responsibilities for cardholders; to clarify when a registry identification card may be revoked; to establish various cannabis business licensure categories; to clarify tiering of cannabis business licenses; to require certain information be included in an application for a cannabis business license; to clarify when the department may deny an application for a cannabis business license; to prohibit a practitioner from being a board member or principal officer of a cannabis business; to prohibit cross-ownership of certain classes of cannabis businesses; to establish rules for local sales, including establishing the process by which a local legislative body may prohibit the operation of cannabis businesses within its territory and the process for local ordinances and ballot initiatives; establish technical requirements for cannabis businesses; to require at least 60% of the board of a cannabis business and at least 60% of the owners of a cannabis business be composed of individuals with at least 3 years of continuous Kentucky residency; to establish requirements for cannabis cultivators, including cultivation square footage limits; to establish requirements for cannabis dispensaries; to establish requirements for safety compliance facilities; to establish requirements for cannabis processors; to establish procedures for the department to inspect cannabis businesses; to establish procedures for the suspension or revocation of a cannabis business license; to protect certain records and information from the disclosure under the Kentucky Open Records Act; to require the department to establish a verification system for use by law enforcement personnel and cannabis business agents; to require the department to establish a database to share data with all licensed dispensaries and monitor the amount of medical marijuana purchased by cardholders in real time; to require the department to promulgate administrative regulations necessary to implement the medicinal marijuana program; to establish an alternative method to create a valid registry identification card if the department fails to act; to clarify that nothing in the bill requires government programs or private insurers to reimburse for the cost of use; to establish the medicinal marijuana trust fund; to require that at least 10% of money in the medical marijuana trust fund be returned to dispensaries for use by indigent persons who are qualified patients and enrolled in certain government assistance programs; to require that 3% of money in the medical marijuana trust fund be used to create a grant program to fund medicinal marijuana related research; to require that not more than 85% of money in the medicinal marijuana trust fund be used for operation and enforcement activities; to establish the local medicinal marijuana trust fund; and to establish procedures for the distribution of local cannabis trust fund moneys; create a new section of KRS Chapter 138 to establish an excise tax of 10% for cultivators and processors for selling to dispensaries; to establish an excise tax of 10% for dispensaries selling to cardholders; to require that 80% of the revenue from the excise taxes be deposited into the medicinal marijuana trust fund; to require that 20% of the revenue from the excise taxes be deposited into the local medicinal marijuana trust fund; amend KRS 218A.010, 218A.1421, 218A.1422, and 218A.1423 to conform; amend KRS 12.020 to change the name of the Department of Alcoholic Beverage Control to the Department of Alcoholic Beverage and Cannabis Control and to create the Division of Medicinal Marijuana; and amend KRS 12.252, 15.300, 15.380, 15.398, 15A.340, 15.420, 61.592, 62.160, 131.1815, 211.285, 241.010, 241.015, 241.030, 243.025, 243.0307, 243.038, 243.090, 243.360, 438.310, 438.311, 438.313, 438.315, 438.317, 438.320, 438.325, 438.330, 438.337, and 438.340 to conform; Sections 2, 4 to 14, 17, 18, 20 to 25, 29, 30, and 34 to 37 EFFECTIVE January 1, 2020; APPROPRIATION.

AMENDMENT: Retain original provisions; delete newly established language in KRS 218A related to at home cultivation of medicinal marijuana by cardholders, registry identification cards for cannabis business agents, a memoranda of understanding between the department and local law enforcement; interactions between cardholders and their employers; establish new language in KRS 218A related to qualifying

medical conditions; the authorizing of practitioners to issue written certification by state licensing boards; the conditions under which a practitioner may provide written certifications; prohibiting the consumption of medicinal marijuana by smoking; the potency of medicinal marijuana that may be produced or sold in this state; collaboration between the department and the University of Kentucky, College of Medicine; the development and maintenance of various computer based software programs by the department; the rights of employers as they pertain to the use of medicinal marijuana by employees; the rights of parents; a provisional licensure receipt; registry identification card renewals; amend KRS 342.815 to establish that the Employer's Mutual Insurance Authority shall not be required to provide coverage to an employer if doing so would subject the authority to a violation of state or federal law; amend KRS 139.470 to exempt the sale of medicinal marijuana from the state sales tax; and make technical corrections. Effective January 1, 2020. APPROPRIATION.

This bill amendment committee substitute is expected to:

Have the following Corrections impact Have no Corrections impact

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| <input checked="" type="checkbox"/> Creates new crime(s) | <input type="checkbox"/> Repeals existing crime(s) |
| <input type="checkbox"/> Increases penalty for existing crime(s) | <input type="checkbox"/> Decreases penalty for existing crime(s) |
| <input type="checkbox"/> Increases incarceration | <input 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 |
- Changes elements of offense for existing crime(s)
- Otherwise impacts incarceration (Explain): Removes criminal penalties for medical marijuana.
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STATE IMPACT: Class A, B & C felonies are based on an average daily prison rate of \$71.10. 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 \$32.78 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 MINIMAL to MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

The legislation establishes regulations for medical cannabis. Qualifying medical conditions are defined. Medical marijuana as established in the legislation is exempted from the criminal offenses of possession of marijuana, trafficking in marijuana, and cultivation of marijuana.

KRS 218A.1421 is modified to reflect trafficking in marijuana that is not authorized within the legislation. The penalties for Trafficking in Marijuana remain a Class A misdemeanor to a Class B felony depending on amounts and number of offenses.

Possession of Marijuana under KRS 218A.1422 is modified to reflect possession of marijuana as a crime only when the possession is not in compliance with the legislation. Possession of Marijuana is a Class B misdemeanor.

KRS 218A.1423 Cultivation of Marijuana is modified to reflect the new guidelines established under the legislation. Cultivation of Marijuana is a Class A misdemeanor to a Class C felony depending on amounts and number of offenses.

The legislation also prescribes certain disqualifiers for felony convictions for specified positions within the medical cannabis business structure. The legislation would take effect in January 1, 2020.

The exemption for medical marijuana may reduce the number of misdemeanor and felony convictions for these offenses. That number cannot be determined because it is unknown how many people would qualify for the medical exemption.

Class D and community custody Class C offenders for Cultivating of Marijuana or Trafficking in Marijuana are eligible to be housed at a county jail facility at a cost of \$31.34 per day, while non-community custody Class C and Class B level offenders are housed at a prison facility at a higher rate of \$71.10 per day.

Currently the Department of Corrections has nine (9) inmates incarcerated on Class C Cultivation of Marijuana and eighty-three (83) for Class D Cultivation of Marijuana, plus seven (7) offenders incarcerated on Class B Trafficking in Marijuana, seventy-six (76) for Class C Trafficking in Marijuana, and 315 inmates for Class D Trafficking in Marijuana. The Department currently has 1,037 offenders on supervision for felony Trafficking or Cultivating

Marijuana offenses, 1,038 offenders on misdemeanor Trafficking or Cultivating Marijuana, and 2,168 offenders on supervision for Possession of Marijuana. (Note: offenders may be incarcerated or on supervision for other offenses. Offenders may have multiple offenses.)

AOC records for FY2018 indicate 1,323 convictions for Trafficking in Marijuana, 372 convictions for Cultivating Marijuana, and 11,465 convictions for Possession of Marijuana. (Includes inchoate offenses.)

Legalization of medical marijuana may potentially reduce the number of marijuana related convictions and corresponding incarceration and supervision surrounding these offenses.

The statutory changes would have an impact on supervision of offenders, substance abuse treatment, and drug testing/monitoring.

Overall, the impact to the Department of Corrections from medical marijuana legislation is expected to be minimal to moderate.

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 MINIMAL to MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

The legislation creates a misdemeanor offense for breach of confidentiality of information, punishable by one hundred eighty (180) days in jail and a one thousand dollar (\$1,000) fine.

The legislation is very specific in subject, confidentiality, and access to information. The number of convictions generated by this offense is expected to be limited with minimal impact to local corrections.

Medical marijuana as established in this legislation may reduce the number misdemeanor convictions for possession, trafficking, and/or cultivating marijuana. The number cannot be determined because it is unknown how many people would qualify for a medical marijuana license as authorized under this bill. Any reduction in the number of convictions or incarceration stemming from marijuana offenses would be a cost savings to the counties and provide some level of relief from jail overcrowding.

Additionally, the exemption for criminal charges at the felony level could also be a reduction in jail beds for eligible state inmates, which assists in reduction of overcrowding but also reduces the amount of revenue in the form of per diem.

Overall, the suspected impact to local corrections under this legislation would be minimal to moderate.

Projected Corrections Impact from Amendments:

There is no additional impact to Corrections based on the House Committee Substitute.

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:  **3/8/2019**
Deputy Commissioner, Kentucky Department of Corrections Date