

# CORRECTIONS IMPACT STATEMENT

SESSION: 19RS BILL # SB 80 Introduced BR # 836 DOC ID #: XXXX

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

SUBJECT: AN ACT relating to the regulation of cannabis and making an appropriation therefor.

**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; establish possession limits; 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prohibit operation of motor vehicles while consuming cannabis and specify that existing intoxication laws are not superseded; prohibit state or local resources to be used to investigate violations of federal Controlled Substances Act that conflict with this KRS Chapter 245; specify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 of Cannabis Control to administer 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 licensure requirements and separate licenses; establish a license and renewal fee and license application form; establish a trust and agency account; establish a cannabis regulation fund and mandate 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 of Cannabis Control; amend KRS 12.252 to reflect the establishment of the Department of Cannabis Control; establish a short title; APPROPRIATION.

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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) .                  |   |

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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 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 permissible transfer amount up to one (1) ounce of cannabis in plant form, five (5) grams of concentrated cannabis, a limited

amount of cannabis products, three (3) immature cannabis plants, and a combination of these items in a limited amount.

Section 2 also allows consumption of cannabis on private or rented/leased residential 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, purchase cannabis accessories, or distribute/sell cannabis accessories to a person who is twenty-one (21) years of age or older. The legislation specifies approved functions for a retail cannabis store, on-site consumption establishment, cannabis cultivation facility, product manufacturing facility, and cannabis testing facility.

Section 3 establishes the possession amounts for an adult: one (1) ounce of cannabis in flower form, eight (8) grams of concentrated cannabis, a limited amount of cannabis products, six (6) mature cannabis plants and six (6) immature cannabis plants, a combination of these items in a limited amount, and cannabis produced by the plants in a prescribed amount. Equivalent amounts of cannabis in flower form are included. Purchasing/selling more than the amounts permitted to possess in a twenty-four (24) hour period is prohibited.

Section 4 establishes the violation of smoking cannabis in a public place as a \$50 fine for a 1<sup>st</sup> Offense and a \$100 fine for Subsequent Offenses. Section 5 prohibits cannabis consumption when operating or driving a motor vehicle or other conveyance. Penalties imposed shall be the same as driving a motor vehicle while under the influence of alcohol or other intoxicants. Sections 6 speaks to law enforcement and employer monitoring.

Section 7 restricts minors under the age of twenty-one (21) from entering a cannabis establishment, purchasing, or using cannabis. No person shall aid a minor by purchasing or serving cannabis. A minor shall not misrepresent his/her age or use false identification. If under the age of eighteen (18), violations are deemed a status offense. 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 8 imposes a penalty of \$100 fine for underage possession of cannabis. Section 9 establishes a Class B misdemeanor for underage cultivation of cannabis. Section 10 imposes a \$500 fine for failure to secure cannabis from unauthorized access, cultivation on property without permission, and failure to keep cannabis cultivation from public view.

Sections 11 & 29-30 establishes the Department of Cannabis Enforcement. Sections 12-14 speak to licensure and application procedures, including specified violations/fines. Section 15 speaks to seizure, forfeiture and disposal. Sections 16-21 cover regulations and taxation. Section 22 provides an exception to the age of majority. Sections 23-25 include cannabis offenses under jurisdiction of a juvenile court.

Section 26 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 27 brings Possession of Marijuana, a Class B misdemeanor, in alignment with the possession limit.

Section 28 re-aligns Marijuana Cultivation, moving a 1<sup>st</sup> Offense from a Class D felony to a Class A misdemeanor, and a 2<sup>nd</sup> or Subsequent Offense from a Class C to a Class D felony. The distinction for cultivation of fewer than five (5) plants is removed.

Nine hundred eighty-eight (988) community offenders have convictions for felony Trafficking in Marijuana and forty-nine (49) have convictions for felony Cultivating Marijuana.

For offenders who are currently incarcerated, 398 inmates are serving on Trafficking in Marijuana and ninety-two (92) are serving on Cultivating Marijuana.

If SB 80 were in effect at the time of their sentencing, the eighty-three (83) 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 \$11,964.87 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 to the state would be \$99,308.42 for a one-year sentence. Estimated incarceration costs would be transferred to the county as the jail would incur incarceration costs for a misdemeanor offense.

In addition, the nine (9) Class C felony Cultivate in Marijuana offenders would be reduced from a Class C to a Class D felony, saving \$13,985.74 annually in reduced custody incarceration costs for each offender, for a total savings of \$125,871.66. (This calculation assumes these Class C felons are not community custody eligible and are housed at a state prison facility.)

This legislation 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.

Legalization of cannabis may potentially reduce the number of marijuana related convictions and corresponding incarceration and supervision surrounding these offenses. The number of offenders receiving convictions for possession and trafficking would decrease, though there would be individuals who continue to commit the offenses of possessing and trafficking beyond personal amount quantities.

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

A Class D Felony sentence is 1 to 5 years.	10 Class D Felons cost KY \$119,649 to \$598,244
1 Class D Felon costs KY \$11,965 to \$59,824	100 Class D Felons cost KY \$1.2M to \$6M

**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)

Decriminalizing cannabis would reduce the number misdemeanor convictions for possession and trafficking. As well, lowering offenses from a felony level to misdemeanor will increase the number of misdemeanor offenders associated with marijuana offenses.

Under current law, possession of marijuana is a Class B misdemeanor. Currently, there are 2,168 offenders on community supervision with a conviction for Possession of Marijuana.

Current data reflects a total of 1,038 offenders with misdemeanor Trafficking or Cultivating Marijuana convictions. (Note: offenders may have multiple offenses.)

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.

The suspected impact for counties and local corrections under this legislation would be significant.

A Class A misdemeanor is 90 days to 1 year in jail.	10 Class A misdemeanants: \$28,206 to \$114,391
1 Class A misdemeanant: \$2,821 to \$11,439	100 Class A misdemeanants: \$282,060 to \$1,143,910

A Class B misdemeanor is up to 90 days in jail.	10 Class B misdemeanants: up to \$28,206
1 Class B misdemeanant: up to \$2,821	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:  1/18/2019  
Commissioner, Kentucky Department of Corrections Date