

CORRECTIONS IMPACT STATEMENT

SESSION: 19RS BILL # SB 82 Introduced BR # 834 DOC ID #: xxxx

BILL SPONSOR(S): Sen. J. Higdon AMENDMENT SPONSOR(S): . .

SUBJECT: AN ACT relating to marijuana possession.

SUMMARY OF LEGISLATION: Create a new section of KRS Chapter 218A to make the penalty for possession of a personal use quantity of marijuana a prepayable non-criminal fine; amend KRS 218A.010 to define "personal use quantity of marijuana" and "marijuana accessory"; amend KRS 218A.1422 regarding marijuana possession to conform; amend KRS 218A.500 regarding drug paraphernalia to exempt personal use marijuana accessories; amend KRS 218A.1421 on marijuana trafficking to exempt personal use quantities; amend KRS 431.450 to include violations for possession of personal use quantities of marijuana in the uniform citation form; amend KRS 500.080 to exclude the offense of possession of a personal use quantity of marijuana from the definition of "violation"; and amend KRS 138.872 to exclude personal use quantities from marijuana stamp tax.

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 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 \$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)

SB 82 provides for a pre-payable non-criminal fine for a personal use quantity of marijuana, removing possession of marijuana as a criminal offense. For a person age eighteen (18) and older, the knowing and lawful possession of a personal use quantity of marijuana would be a civil penalty of \$100 or fifteen (15) hours of community service in lieu of a fine. If the offense occurs on school property, the penalty is \$250 or thirty (30) hours of community service.

Personal use quantity is defined as one (1) ounce or less of marijuana in plant form, five (5) grams or less of marijuana resin or concentrate, or marijuana products containing 300 grams or less of THC content.

Possession of Marijuana under KRS 218A.1422 is modified to reflect possession in excess of a quantity for personal use. Possession of Marijuana is a Class B misdemeanor.

KRS 218A.500 is amended to include an exception for marijuana accessories to drug paraphernalia.

KRS 218A.1412 Trafficking in Marijuana is amended to reflect trafficking in quantities more than defined for personal use, but less than eight (8) ounces. For this amount, Trafficking in Marijuana is a Class A misdemeanor for a first offense and a Class D felony for a Subsequent Offense.

The legislation also revises the marijuana stamp tax to exclude personal use quantities.

Currently the Department of Corrections has seven (7) offenders incarcerated on Class B Trafficking in Marijuana, seventy-six (76) offenders incarcerated on Class C Trafficking in Marijuana, and 315 inmates incarcerated for Trafficking in Marijuana. (Note: offenders may be incarcerated on other offenses.) The Department currently has 988 offenders on supervision for felony Trafficking in Marijuana offenses, 569 offenders on supervision for misdemeanor Trafficking in Marijuana, and 2,168 offenders on supervision for Possession of Marijuana.

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

Removal of the criminal penalty for possession of marijuana would 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 would have an impact on supervision of offenders, substance abuse treatment, and drug testing/monitoring.

Overall, the impact to the Department of Corrections from decriminalizing of marijuana would be significant in the supervision of offenders with a moderate to significant impact to incarceration. The larger impact would be to the county level.

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)

Decriminalization of possession of marijuana would reduce the number misdemeanor convictions for possession and trafficking. It is not possible to identify from current convictions how many offenses would be classified at the personal use level. Additionally, it is not possible to predict how many offenders would possess or traffic beyond personal amount quantities in the future.

Any reduction in the number of convictions or incarceration stemming from marijuana offenses would be a cost savings to the counties and provide relief from jail overcrowding.


Additionally, the reduction in criminal offenses at the felony level could also be a decrease in state inmates eligible to be housed at a county jail, which assists in reduction of overcrowding, but also reduces the amount of revenue for jails in the form of per diem.

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

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: 
Commissioner, Kentucky Department of Corrections

1/18/2019
Date