

CORRECTIONS IMPACT STATEMENT

SESSION: 20RS BILL # HB 136 GA . BR # 366 DOC ID #: HB013610.100 - 366 - XXXX

BILL SPONSOR(S): Rep. J. Nemes, J. Sims Jr, T. Bojanowski, C. Booker, T. Branham Clark, K. Bratcher, G. Brown Jr, T. Burch, M. Cantrell, J. Donohue, L. Elkins, D. Elliott, K. Flood, C. Freeland, A. Gentry, J. Glenn, J. Gooch Jr., D. Graham, C. Harris, M. Hart, A. Hatton, K. Hinkle, C. Howard, T. Huff, J. Jenkins, M. Koch, N. Kulkarni, D. Lewis, S. Maddox, M. Marzian, C. McCoy, R. Meeks, R. Meyer, C. Miller, J. Miller, P. Minter, D. Osborne, R. Palumbo, P. Pratt, R. Rand, J. Raymond, D. Schamore, A. Scott, M. Sorolis, C. Stevenson, W. Stone, S. Westrom, B. Wheatley, R. Wiederstein, L. Willner, L. Yates

AMENDMENT SPONSOR(S): Rep. M. Prunty, J. Blanton, D. Bentley, R. Goforth, C. Fugate, D. Frazier

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

SUMMARY OF LEGISLATION: Create various 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 medicinal marijuana by qualifying patients, visiting patients, and designated caregivers; to establish certain protections for cardholders; to establish professional protections for practitioners; to provide for the authorizing of practitioners by state licensing boards to issue written certifications for the use medicinal marijuana; 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; to permit an employer to restrict the possession and use of medicinal marijuana by an employee; 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 establish when the department may deny an application for a registry identification card; to establish certain responsibilities for cardholders; to establish when a registry identification card may be revoked; to establish various cannabis business licensure categories; to establish tiering of cannabis business licenses; to require certain information be included in an application for a cannabis business license; to establish 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; to establish technical requirements for cannabis businesses; to establish limits on the THC content of medicinal marijuana that can be produced or sold in the state; 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 exempt certain records and information from the disclosure under the Kentucky Open Records Act; to require the department to develop, maintain, and operate electronic systems for monitoring the medicinal marijuana program; to require the department to promulgate administrative regulations necessary to implement the medicinal marijuana program; to establish 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 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 12% for cultivators and processors for selling to dispensaries; 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 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 medical marijuana from the state sales tax; amend KRS 218A.010, 218A.1421, 218A.1422, 218A.1423, and 218A.500 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; EFFECTIVE January 1, 2021; APPROPRIATION.

AMENDMENT: Retain original provisions; replace references to medicinal marijuana with medicinal cannabis; delete provisions related to tiering of cannabis businesses except for cultivators, qualifying medical conditions, the Department of Alcoholic Beverage and Cannabis Control, and outdoor cultivation of cannabis; amend provisions related to definitions, allocation of the medicinal cannabis trust fund dollars, allocation of the local medicinal cannabis trust fund, licensing of cannabis business, and cultivation square footage limits; and establish new provisions related to administration and regulation by the Department for Public Health, the Board of Physicians and Advisors, cannabis business accreditation, collaborative agreements between pharmacists and dispensaries, patient consultations with pharmacists; make technical corrections; Sections 2, 4 to 8, 11, 13 to 15, 18 to 25, 30, and 37 to 39 EFFECTIVE July 1, 2021, APPROPRIATION.

AMENDMENT 3: Prohibit cannabis businesses from advertising medicinal cannabis sales; APPROPRIATION.

AMENDMENT 5: Establish civil liability for dispensaries and dispensary agents that do not comply with certain provisions of this Act.

AMENDMENT 8: Amend KRS 216B.402 to require hospitals to report cases of cannabinoid hyperemesis syndrome to the Department for Public Health; APPROPRIATION.

AMENDMENT 10: Establish minimum list of qualifying medical conditions; effective July 1, 2021; APPROPRIATION.

AMENDMENT 11: Delete all references to a dentist, podiatrist, and an optometrist as they relate to a practitioner who is authorized to provide written certifications for the use of medicinal cannabis.

AMENDMENT 14: Require cardholders to return medicinal cannabis products to dispensaries for destruction if the registered qualified patient dies or ceases to be a qualified patient; effective July 1, 2021; APPROPRIATION.

AMENDMENT 15: Permit law enforcement personnel and dispensary agents to access medicinal cannabis sales data reported by dispensaries; effective January 1, 2021; APPROPRIATION.

AMENDMENT 17: Prohibit the sale of medicinal cannabis products intended for consumption by vaporization to cardholders under 21 years of age; effective July 1, 2021; APPROPRIATION.

This bill amendment committee substitute is expected to:

Have the following Corrections impact Have no Corrections impact

- | | |
|---|--|
| <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 |
| <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 \$75.91. Community Custody Class C and most Class D felons are housed in one of 77 full service jails for up to 5 years. Department of Corrections' cost to incarcerate a felony inmate in a jail is \$36.70 per day, which includes \$31.34 per diem, medical costs, & central office administrative costs (substance abuse treatment not included). *Projections are based on the daily rate x 365 days x number of years. Offenders may have multiple offenses or incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers will include inchoate offenses at the underlying offense level.*

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

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

The legislation also prescribes certain disqualifiers for felony convictions for specified positions within the medical cannabis business structure.

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, modifying the criminal penalty to apply only to actions not authorized within the legislation. Cultivation of Marijuana is a Class A misdemeanor to a Class C felony depending on amounts and number of offenses.

KRS 218A.500 is also modified to reflect criminal possession of drug paraphernalia excluding medicinal marijuana accessories as defined by the legislation. Possession of Drug Paraphernalia is a Class A misdemeanor.

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 to the state of \$36.70 per day, while Non-Community Custody Class C and Class B level offenders are housed at a prison facility at the higher rate of \$75.91 per day.

Currently the Department of Corrections has 573 inmates incarcerated on marijuana related offenses. Those inmates have 450 Trafficking in Marijuana convictions and seventy-two (72) convictions for Cultivating Marijuana. (*Note: offenders may be incarcerated or on supervision for other offenses. Offenders may have multiple offenses.*)

Four thousand six hundred ninety-three (4,693) community offenders are on supervision for marijuana related offenses. One thousand nine hundred seventy-eight (1,978) have convictions for Trafficking in Marijuana, 477 have convictions for Cultivating Marijuana, and 2,562 for Possession of Marijuana convictions.

AOC records for FY 2019 reflect 396 Class D felony convictions for marijuana related offenses. Additionally, there were eighty-six (86) Class C felony convictions for Trafficking or Cultivation, and five (5) Class B felony convictions for Trafficking in Marijuana greater than five (5) pounds 2nd or Subsequent Offense. (*Includes inchoate offenses.*)

Legalization of medical marijuana may potentially reduce the number of marijuana related convictions and corresponding incarceration and supervision surrounding these offenses, as a certain number of individuals who currently possess or cultivate marijuana in violation of the law could legally do so under a medical marijuana license. That number cannot be determined because it is unknown how many people would qualify for the medical exemption.

The statutory changes would have an impact on supervision of offenders, substance abuse treatment, and drug testing/monitoring. At a felony level, 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. Since the per diem is an estimated average cost of housing an inmate, the per diem may not be the actual housing cost for the jail. *Projections are based on the daily rate x 365 days x number of years. Offenders may have multiple offenses or incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers will include inchoate offenses at the underlying offense level.*

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 up to 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.

AOC records for FY2019 reflects 13,247 misdemeanor marijuana related convictions, including misdemeanor Possession of Marijuana, Trafficking or Cultivation. Further, 11,962 convictions were specific to Possession of Marijuana.

Currently, there are 2,562 offenders on community supervision with a conviction for Possession of Marijuana. Additionally, there are a total of 651 supervised offenders with misdemeanor Trafficking or Cultivating Marijuana convictions.

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.

The reduction of criminal charges at the felony level would 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 \$31.34 per diem paid to local detention facilities for housing state inmates.

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

Projected Corrections Impact from Amendments:

The House Committee Amendment introduces a title change for the bill. The House Committee Substitute changes wording from medicinal marijuana to medicinal cannabis. Among other changes, oversight is moved from the Department of Alcoholic Beverage and Cannabis Control to the Department for Public Health. The original version of the bill included a list of certain medical conditions qualifying for medical cannabis while the Committee Substitute establishes a Board of Physicians and Advisors who will review and recommend a list of qualifying medical conditions.

There is no change in impact on state or local corrections under the House Committee Substitute. HB 136 passed the House with the House Committee Substitute, House Committee Amendment, and several Floor Amendments.


The House Floor Amendments prevent advertising for medicinal cannabis; establish civil liability for dispensaries not in compliance; require hospitals to report cannabinoid hyperemesis syndrome; establish a minimum list of qualifying medical conditions to include chronic pain, epilepsy, multiple sclerosis, nausea or vomiting; delete dentists, podiatrists, and optometrists and authorized practitioners to prescribe medicinal cannabis; require the return of unused medicinal cannabis products for destruction; permit law enforcement access to sales records; and prohibit sale of vaporization products to cardholders under the age of twenty-one (21).

There is no significant change in impact on state or local corrections under the House Floor Amendments.

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:  **2/24/2020**
Deputy Commissioner, Kentucky Department of Corrections Date