This ☒ bill ☒ amendment ☒ committee substitute is expected to:

☑ Have the following Corrections impact ☐ Have no Corrections impact

☒ Creates new crime(s) ☐ Repeals existing crime(s)
☐ Increases penalty for existing crime(s) ☐ Decreases penalty for existing crime(s)
☐ Increases incarceration ☐ Decreases incarceration
☐ Reduces inmate/offender services ☐ Increases inmate/offender services
☐ Increases staff time or positions ☐ Reduces staff time or positions
Changes elements of offense for existing crime(s)
☐ Otherwise impacts incarceration (Explain) .

**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.

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: ___________________________ 2/17/2020
Commissioner, Kentucky Department of Corrections Date