

CORRECTIONS IMPACT STATEMENT

SESSION: 20RS BILL # HB 221 Introduced BR # 157 DOC ID #: xxxx

BILL SPONSOR(S): Rep. C. Booker AMENDMENT SPONSOR(S): . .

TITLE: 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 pre-payable 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 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; create a new section of KRS Chapter 431 to allow expungement of convictions for possession of a personal use quantity of marijuana or marijuana accessories.

AMENDMENT: .

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) . | |
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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 seventy-seven (77) full service or regional jails for up to five (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)

HB 221 modifies Possession of Marijuana under KRS 218A.1422 to reflect possession in excess of a quantity for personal use. Possession of Marijuana is a Class B misdemeanor.

The legislation provides for a pre-payable fine for a personal use quantity of marijuana, removing possession of marijuana as a criminal offense. For a person under the age of twenty-one (21), the knowing and lawful possession of a personal use quantity of marijuana would be a civil penalty of \$100 fine. Personal use quantity would not be subject to arrest, unless other lawful grounds for arrest exist.

Under KRS 218A.010 marijuana accessory is defined as paraphernalia for the ingestion, inhalation, or storage of a personal use quantity of marijuana. Personal use quantity is defined as 100 grams or less of marijuana.

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

KRS 431.450 directs peace officers to use the uniform citation for violations of the offenses under this legislation.

Under KRS 500.080 offenses under this legislation are added to the definition of a violation under the Kentucky Penal Code.

The legislation also revises the marijuana stamp tax in KRS 138.872 to exclude personal use quantities. In addition to a monetary penalty for failing to pay the required tax, KRS 138.889 carries a Class C penalty for failing to affix the appropriate tax stamp, label, etc., which indicates payment of the tax.

The legislation also establishes expungement for any person who has been convicted of possession of a personal use amount of marijuana or possession of marijuana accessories. There is no filing fee or court costs for expungement under this section or KRS 431.079, with retroactive application of expungements according to the legislation.

The legislation carries an impact to the Administrative Office of the Courts and Kentucky State Police in the processing of expungement records.

Two thousand five hundred sixty-two (2,562) community offenders are on supervision for misdemeanor Possession of Marijuana convictions.

AOC records for FY2019 reflects 11,962 convictions for Possession of Marijuana.

Additionally, there were 13,402 convictions for Possession of Drug Paraphernalia, though it is unknown how many of these Possession of Drug Paraphernalia offenses may have been related to marijuana accessories.

Under the legislation, there would be reduction in convictions for Possession of Drug Paraphernalia, though there is no way at present to determine how many instances would constitute possession of marijuana accessories versus other drug related paraphernalia.

The legislation involves a Class C penalty under KRS 138.889 related to taxes; however, records indicate that convictions under this offense are historically limited.

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 would decrease, though there would be individuals who continue to commit the offenses of possession of marijuana 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 marijuana for personal amounts 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.

A Class C Felony sentence is 5 to 10 years.	10 Class C Felons cost KY \$1,385,413.59 to \$2,770,827.17
1 Class C Felon costs KY \$138,541.366 to \$277,082.72	100 Class C Felons cost KY \$13,854,135.86 to \$27,708,271.72

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)

Decriminalization of possession of marijuana for personal use would reduce the number of marijuana related convictions. 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 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.

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

A Class B misdemeanor is up to 90 days in jail.	10 Class B misdemeanants: up to \$28,206.00
1 Class B misdemeanant: up to \$2,820.60	100 Class B misdemeanants: up to \$282,060.00

Projected Corrections Impact from 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: Kathleen M. Keavy 1/24/2020
Commissioner, Kentucky Department of Corrections Date