

CORRECTIONS IMPACT STATEMENT

SESSION: 20RS BILL # SB 105 Introduced BR # 1284 DOC ID #: xxxx

BILL SPONSOR(S): Sen. P. Clark AMENDMENT SPONSOR(S): . .

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

SUMMARY OF LEGISLATION: Create various new sections of KRS Chapter 245 to define terms; to allow for possession, growth, use, processing, purchasing, transfer, and consumption of cannabis; to establish limits for transfer; to allow for purchasing and manufacture of cannabis accessories; to authorize activities and operation of retail stores, consumption establishments, cultivation facilities, cannabis testing facilities, and product manufacturing facilities; to establish possession limits; to prohibit smoking cannabis in public and to establish a fine for violation; to prohibit operation of motor vehicles while consuming cannabis and to specify that existing intoxication laws are not superseded; to prohibit state or local resources to be used to investigate violations of federal Controlled Substances Act that conflict with this KRS Chapter 245; to specify that an employer is not required to allow consumption, workplace intoxication, possession, or transfer of cannabis; to prohibit individuals under the age of 21 from entering cannabis establishments, purchasing, using, or misrepresenting their age and to provide for exceptions; to establish provisions for palliative or therapeutic use of cannabis by persons under the age of 21; to establish a penalty for underage possession of cannabis; to establish a penalty for underage cultivation of cannabis; to establish provisions for personal cultivation; to 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; to establish restrictions on advertising, and restrictions on additives, pesticides, visitor logs, and sample testing; to require promulgation of administrative regulations within 180 days; to establish timeframes for the issuance of licenses; to establish licensure requirements and separate licenses; to establish cannabis business license tiers; to establish a license and renewal fee and license application form; to establish a trust and agency account; to establish a cannabis regulation fund and mandate the direction of certain funds; to establish a civil penalty for violating KRS Chapter 245, including for failing to keep written records and submitting required reports; to require prioritization for Kentucky residents in the licensing of cannabis businesses; to establish the legislative intent that cannabis or cannabis products not in conformity with KRS Chapter 245 are seizable as contraband; to allow for local governments to prohibit the operation of cannabis businesses; to create a new section of KRS Chapter 138 to establish excise taxes; to establish the social equity loan trust and Social Equity Loan Program; to create a new section of KRS Chapter 139 to direct the placement of excise taxes and sales taxes relating to cannabis; to create a new section of KRS Chapter 431 to provide for the expungement of minor cannabis offenses; amend KRS 431.079 to conform; 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.1421, 218A.1422, 218A.1423 to conform; amend KRS 218A.500 to exclude cannabis accessories from the definition of drug paraphernalia; amend KRS 12.020 and 12.252 to reflect the establishment of the Department of Cannabis Control; to establish a short title; EFFECTIVE January 1, 2021; APPROPRIATION.

AMENDMENT: .

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 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 \$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)

The Adult Responsible Use 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 possession limit as up to one (1) ounce of cannabis in plant form, eight (8) grams of concentrated cannabis, a limited amount of cannabis products, six (6) mature and six (6) immature cannabis plants, a combination equal to one (1) ounce of cannabis flower, or any cannabis produced by the possessor's plants secured at the cultivation location. Transferring of cannabis has similar defined amounts.

Under the legislation, being age twenty-one (21) or older, it would no longer be unlawful to manufacture, possess, or purchase cannabis accessories, or distribute or sell cannabis accessories to a person aged twenty-one (21) or older.

The legislation establishes the violation of smoking cannabis in a public place as subject to a \$50 fine for a first offense and a \$100 fine for a subsequent offense. The legislation prohibits cannabis consumption when operating or driving a motor vehicle or other conveyance, subject penalties established in KRS 189A.010. This section does not prevent imposition of penalties for driving under the influence. It is noted that the legislation does not prohibit employers from prohibiting consumption in the workplace.

The legislation restricts minors under the age of twenty-one (21) from purchasing or using cannabis. The minor shall not misrepresent their age or use false identification. No person shall aid the minor by purchasing or providing cannabis. A person between the age of eighteen (18) and twenty-one (21) may enter a cannabis establishment for contract or official government duties. If under the age of eighteen (18), violations are deemed a status offense subject to juvenile court. If over the age of eighteen (18), these violations of law shall be Class B misdemeanor offenses.

A \$100 fine is imposed for an under-aged individual knowingly and unlawfully possessing cannabis. A Class B misdemeanor is established for a minor who knowingly and unlawfully cultivates cannabis. A \$500 fine is imposed for unlawful consumption of cannabis, allowing a minor unlawful access to cannabis, and failure to keep cannabis cultivation from public view.

The legislation establishes the Department of Cannabis Control and creates licensure and application procedures, regulations, and taxes. Cannabis is added to the age of majority and cannabis offenses are referenced under juvenile court jurisdiction.

Kentucky State Police is tasked with automatic expungement of criminal history records for minor cannabis offenses committed prior to the effective date of the legislation. Minor cannabis offenses as defined by the legislation include Trafficking in Marijuana less than eight (8) Oz. 1st & 2nd Offense, Trafficking in Marijuana eight (8) Oz. to five (5) Lbs 1st Offense, Possession of Marijuana, and Cultivation of Marijuana more than five (5) plants 1st Offense. Misdemeanor and Class D felony cannabis related offenders for Trafficking, Possession, and Cultivation may petition the court for expungement.

Trafficking in Marijuana (KRS 218A.1421) is redefined to amounts more than the cannabis possession limit. Trafficking in Marijuana ranges from a Class A misdemeanor to a Class B felony depending on the amount and offense number. Possession of Marijuana (KRS 218A.1422), a Class B misdemeanor, is also aligned with the cannabis possession limit as defined in the legislation. Marijuana Cultivation (KRS 218A.1423) of more than five (5) plants is re-aligned, moving the 1st Offense from a Class D felony for a Class A misdemeanor and the 2nd or Subsequent Offense from a Class C to a Class D felony. Marijuana Cultivation for fewer than five (5) plants is deleted. Possession of Drug Paraphernalia (KRS 219A.500) is modified to exclude cannabis accessories.

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 and 477 have convictions for Cultivating Marijuana. In addition, there are 2,562 misdemeanor Possession of Marijuana convictions.

For offenders who are currently incarcerated, 573 inmates are serving on marijuana related offenses. Those inmates have 450 Trafficking in Marijuana convictions and seventy-two (72) convictions for Cultivating Marijuana. (*Note: offenders may be serving on multiple convictions.*)

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

Under the legislation, there would be reduced marijuana related convictions with a corresponding impact to incarceration and supervision surrounding these offenses. The number of offenders receiving convictions for possession, trafficking,

