

CORRECTIONS IMPACT STATEMENT

SESSION: 20RS BILL # SB 107 Introduced BR # 1241 DOC ID #: xxxx

BILL SPONSOR(S): Sen. S. West AMENDMENT SPONSOR(S): . . .

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: .

This bill amendment committee substitute is expected to:

Have the following Corrections impact Have no Corrections impact

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|---------------------------------------------------------------------------------------|------------------------------------------------------------------|
| <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) . | |

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 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, seventy-two (72) convictions for Cultivating Marijuana, and 100 misdemeanor Possession offenses. (*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 5,017 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.

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