

CORRECTIONS IMPACT STATEMENT

SESSION: 21RS BILL # HB 136 Introduced BR # 49 DOC ID #: xxxx

BILL SPONSOR(S): Rep. J. Nemes, A. Gentry, W. Lawrence, T. Bojanowski, K. Flood, R. Goforth, A. Hatton, T. Huff, N. Kirk-McCormick, N. Kulkarni, D. Lewis, C. Miller, J. Miller, P. Minter, D. Osborne, R. Palumbo, P. Pratt, C. Stevenson **AMENDMENT SPONSOR(S):** . .

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

SUMMARY OF LEGISLATION: Create various new sections of KRS Chapter 218A to define terms; exempt the medicinal cannabis program from existing provisions in Kentucky law to the contrary; require the Department of Alcoholic Beverage and Cannabis Control implement and regulate the medicinal cannabis program; establish the Division of Medicinal Cannabis and the Board of Physicians and Advisors within the Department of Alcoholic Beverage and Cannabis Control ; establish restrictions on the possession and use of medicinal cannabis by cardholders; establish certain protections for cardholders; establish professional protections for practitioners, attorneys, and other professionals; provide for the authorizing of practitioners by state licensing boards to issue written certifications for the use medicinal cannabis; prohibit the consumption of medicinal cannabis by smoking; permit an employer to restrict the possession and use of medicinal cannabis by an employee; require the department to implement and operate a registry identification card program; establish requirements for registry identification cards; establish registry identification card fees; require the department to operate a provisional licensure receipt system for cardholders; establish the requirements for a registry identification card and the application process; establish notification requirements for cardholders; establish when a registry identification card may be revoked; establish various cannabis business licensure categories; establish requirements for a cannabis business licensure and the application process for a license; prohibit a practitioner from being a board member or principal officer of a cannabis business; prohibit cross-ownership of certain classes of cannabis businesses; 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; establish technical requirements for cannabis businesses; establish limits on the THC potency of medicinal cannabis that can be produced or sold in the state; establish cultivation square footage limits for cannabis businesses that are permitted to cultivate; establish procedures for the department to inspect cannabis businesses; establish procedures for the suspension or revocation of a cannabis business license; exempt certain records and information from the disclosure under the Kentucky Open Records Act; require the department to develop, maintain, and operate electronic systems for monitoring the medicinal cannabis program; require the department to promulgate administrative regulations necessary to implement the medicinal cannabis program; establish that nothing in the bill requires government programs or private insurers to reimburse for the cost of use; establish the medicinal cannabis trust fund; establish the local medicinal cannabis trust fund; establish procedures for the distribution of local cannabis trust fund moneys; create a new section of KRS Chapter 138 to establish an excise tax on certain transfers of medicinal cannabis; amend KRS 216B.402 to require hospital emergency departments to report cases of cannabinoid hyperemesis syndrome to the Department of Alcoholic Beverage and Cannabis Control; 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 cannabis from the state sales tax; amend KRS 218A.010, 218A.1421, 218A.1422, 218A.1423, and 218A.500 to conform; amend KRS 12.020, 12.252, 15.300, 15.380, 15.398, 15.420, 15A.340, 61.592, 62.120, 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, 438.320438.325, 438.330, 438.337, and 438.340 to change the name of the Department of Alcoholic Beverage Control to the Department of Alcoholic Beverage and Cannabis Control; some sections EFFECTIVE July 1, 2022; 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 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 |

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 \$80.24. 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 \$37.35 per day, which includes \$31.34 per diem, medical costs, & central office administrative costs (substance abuse treatment not included).*

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

The legislation establishes regulations for medical cannabis. Medical cannabis 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.

The following criminal offenses are modified to apply only to actions, possession, or marijuana accessories that are not authorized within the legislation:

- ◆ KRS 218A.1421 Trafficking in Marijuana – ranges from Class A misdemeanor to a Class B felony depending on amounts and number of offenses.
- ◆ KRS 218A.1422 Possession of Marijuana - Class B misdemeanor.
- ◆ KRS 218A.1423 Cultivation of Marijuana - ranges from Class A misdemeanor to a Class C felony depending on amounts and number of offenses.
- ◆ KRS 218A.500 Possession of Drug Paraphernalia - 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 incarcerate of \$37.35 per day, while non-Community Custody Class C and Class B level offenders are housed at a prison facility at the higher rate of \$80.24 per day.

- ◆ Currently the Department of Corrections has 462 inmates incarcerated on marijuana related offenses. Those inmates have 369 Trafficking in Marijuana convictions, forty-four (44) convictions for Cultivating Marijuana, and ninety-four (94) misdemeanor Possession offenses. (*Note: offenders may be incarcerated for other offenses or have multiple offenses.*)
- ◆ Four thousand five hundred forty-one (4,541) community offenders are on supervision for 4,854 marijuana related offenses. One thousand eight hundred eighty-nine (1,889) have convictions for Trafficking in Marijuana, 420 have convictions for Cultivating Marijuana, and 2,545 for Possession of Marijuana convictions.
- ◆ AOC records for FY 2020 reflect 301 Class D, seventy-four (74) Class C, and seven (7) Class B felony convictions for marijuana related offenses. (*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. The estimated impact will be based on the \$37.35 cost to

incarcerate while \$31.34 is the per diem and medical that DOC pays jails to house felony offenders. Since the cost to incarcerate is an estimated average cost of housing an inmate, this may not be the actual housing cost for the jail.*

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.

Medical marijuana as established in this legislation may reduce the number misdemeanor convictions for possession, trafficking, and/or cultivating marijuana.

- ◆ AOC records for FY2020 show a total of 8,420 misdemeanor marijuana related convictions.
 - Of those, 7,641 convictions were specific to Possession of Marijuana.
- ◆ Currently, there are 2,545 offenders on community supervision with a conviction for Possession of Marijuana. Additionally, there are a total of 598 supervised offenders with misdemeanor Trafficking or Cultivating Marijuana convictions.

It is not possible to determine 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 population relief. The reduction of criminal charges at the felony level would reduce state inmates in jail beds, which also assists in population reduction, 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:

**All projections are based on the daily rate x 365 days x number of years. The cost to incarcerate as calculated by the Department is shown here as rounded to the hundredths. Offenders may have multiple offenses or be incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers will include inchoate offenses at the underlying offense level.*

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, lengthens the term or incarceration, or impose new obligations on state or local governments.

APPROVED BY:



Chief of Staff, Kentucky Department of Corrections

2/14/2021

Date