

# CORRECTIONS IMPACT STATEMENT

SESSION: 21RS BILL # HB 461 Introduced BR # 479 DOC ID #: xxxx

BILL SPONSOR(S): Rep. N. Kulkarni, A. Scott, L. Willner AMENDMENT SPONSOR(S): . .

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

**SUMMARY OF LEGISLATION:** Establish KRS Chapter 245 and create new sections thereof to define terms, including "cannabis accessory", "cannabis product", "immature cannabis plant", and "mature cannabis plant"; require cannabis to be tracked from seed to consumer; establish license types, application fees, and license fees; specify allowed transactions for each license type; require the board to promulgate an administrative regulation for license applications; set license length at one year and allow the board to establish renewal system; set forth an applicant scoring system; establish parameters for social equity applicant and disproportionately impacted areas; require cannabis retail stores to be separate from other store and only carry cannabis, cannabis products, and cannabis accessories; create requirements for child-proof packaging and labeling; establish procedures for license denial and a hearing in accordance with KRS Chapter 13B; establish payments in lieu of suspension for licensees and direct the funds to the agency's revolving trust and agency account and the criminal justice reinvestment fund; establish minimum age of 21 to use or buy cannabis and create status offense for minors under eighteen; ban smoking cannabis in public; and require signs in retail locations regarding minors and the US Surgeon General's statement on cannabis; create new sections of KRS Chapter 138 to define "cannabis", "cannabis administrator", and "cannabis product"; set wholesale tax rates and payment schedules for cannabis cultivator and processor licensees, allow local governments to impose up to a five percent regulatory license fee on cannabis licensees in their territory; establish conditions for tax liability; impose civil penalties for tax violations; create a new section of KRS Chapter 245 to set conditions for the cannabis tax rates effective July 1, 2026 and beyond; amend KRS 2.015 to exempt cannabis from age of majority; amend KRS 241.020 to include a Division of Cannabis in the Department of Alcoholic Beverage Control; amend KRS 241.030 to add administrator of the Division of Cannabis; amend KRS 241.060 to add supervision of the cultivation, processing, testing, and trafficking of cannabis to the board's duties and require Department of Agriculture to review regulations for cultivators prior to filing; amend KRS 241.090 to add cannabis to search provisions; amend KRS 243.025 to direct application fees for cannabis licenses into the agency revolving trust account; amend KRS 218A.1421 to exempt cannabis licenses from trafficking statute; amend KRS 218A.1422 to exempt one ounce of marijuana from possession statute; amend KRS 218A.1423 to permit cannabis cultivator licensees to cultivate under their license; amend KRS 218A.500 to exclude cannabis accessories from drug paraphernalia; create a new section of KRS Chapter 431 to create process for expungement of marijuana misdemeanor charges and to waive fees; amend KRS 431.079 to exclude need for certification of eligibility for expungement; amend KRS 131.1815 to include cannabis licensees in delinquent taxpayer statute; amend KRS 600.020 to include cannabis offenses in the definition of status offense; amend KRS 12.020 to create Division of Cannabis within the Department of Alcoholic Beverage Control.

**AMENDMENT:** .

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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 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 \$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)

This legislation establishes the regulation of cannabis. Sections 1-13 discuss licensing and tracking. There are restrictions for individuals with criminal records.

Section 14 mandates that cannabis, cannabis products, and accessories may only be purchased, possessed, consumed, or used by a person age twenty-one (21) or older. Minors under the age of twenty-one (21) are restricted from entering a licensed cannabis establishment for the purchase or receipt of cannabis. A minor shall not misrepresent his/her age or use false identification. If under the age of eighteen (18), violations are deemed a status offense. Section 16 requires postings, to include the criminal penalties for minors.

Section 15 prohibits smoking of cannabis in public or in a motor vehicle, subject to a maximum fine of \$100.

Sections 17-22 discuss taxation and civil penalties. Section 23 adds the purchase of cannabis, products, and accessories as an exception to the age of majority. Sections 24-28 establish regulation authority.

Section 29 redefines KRS 218A.1421 Trafficking in Marijuana to include transfers of cannabis outside of the license established within the legislation.

- ◆ Trafficking in Marijuana ranges from a Class A misdemeanor to a Class B felony depending on the amount and offense number.

Section 30 redefines KRS 218A.1422 Possession of Marijuana to unlawfully possessing more than one (1) ounce of marijuana.

- ◆ Possession of Marijuana is a Class B misdemeanor.

Section 31 provides an exception to KRS 218A.1423 Marijuana Cultivation for those holding a license to cultivate or grow under this legislation.

- ◆ Marijuana Cultivation is a Class D or Class C felony depending on the number of plants and subsequent offenses.

Section 32 provides an exclusion to KRS 219A.500 Possession of Drug Paraphernalia for cannabis accessories and items used in the cultivation of cannabis licensed under this legislation.

- ◆ Possession of Drug Paraphernalia is a Class A misdemeanor.

Under Sections 33-34, individuals who have been convicted of a misdemeanor for possession of marijuana or marijuana related paraphernalia may petition the court for expungement of the record. Filing fees and court costs shall be waived.

Section 35 adds cannabis offenses to the list of juvenile status offenses. Section 36 creates the Division of Cannabis under the Department of Alcoholic Beverage Control.

- ◆ 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.*)

The legislation would reduce the number of offenders receiving convictions for possession, trafficking, and cultivation, though there would be individuals who continue to commit the offenses of possessing, trafficking, and cultivating beyond the licensing requirements and amount quantities as specified under the legislation.

The statutory changes as introduced will have an impact on supervision of offenders, substance abuse treatment, and drug testing/monitoring.

#### Cost to Incarcerate

A Class B Felony sentence is 10 to 20 years.

1 Class B Felon costs KY \$292,877.46 to \$585,754.92

10 Class B Felons cost KY \$2,928,774.58 to \$5,857,549.15

100 Class B Felons cost KY \$29,287,745.77 to \$58,575,491.55

A Class C Felony sentence is 5 to 10 years.

1 Class C Felon costs KY \$146,438.73 to \$292,877.46

10 Class C Felons cost KY \$1,464,387.29 to \$2,928,774.58

100 Class C Felons cost KY \$14,643,872.89 to \$29,287,745.77

A Class D Felony sentence is 1 to 5 years.

10 Class D Felons cost KY \$136,345.44 to \$681,727.22

**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)

Under the legislation, there would be reduced marijuana related convictions. Marijuana can be possessed lawfully in small amounts, reducing the number of criminal convictions for Possession of Marijuana.

- ◆ Possession of marijuana is a Class B misdemeanor, subject to county jurisdiction and costs.
- ◆ 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.

Behavior that currently would result in a district court action would not be criminal under the legislation, providing fewer offenses related to marijuana and possibly fewer incarcerated individuals, impacting both the county and state incarcerated population.

Cost to Incarcerate

A Class A misdemeanor is 90 days to 1 year in jail.  
1 Class A misdemeanor: \$3,361.94 to \$13,634.54

10 Class A misdemeanants: \$33,619.42 to \$136,345.44  
100 Class A misdemeanants: \$336,194.25 to \$1,363,454.45

A Class B misdemeanor is up to 90 days in jail.  
1 Class B misdemeanor: up to \$3,361.94

10 Class B misdemeanants: up to \$33,619.42  
100 Class B misdemeanants: up to \$336,194.25

**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:**  **2/24/2021**  
Chief of Staff, Kentucky Department of Corrections Date