

CORRECTIONS IMPACT STATEMENT

SESSION: 22RS BILL # HB 136 GA BR # 50 DOC ID #: HB013610.100 - 50 - XXXX

BILL SPONSOR(S): Rep. J. Nemes, A. Gentry, T. Bojanowski, K. Bratcher, G. Brown Jr., T. Burch, M. Cantrell, J. Dixon, J. Donohue, D. Elliott, P. Flannery, K. Fleming, C. Freeland, J. Gooch Jr., D. Graham, M. Hart, A. Hatton, S. Heavrin, T. Huff, J. Jenkins, N. Kirk-McCormick, M. Koch, N. Kulkarni, W. Lawrence, D. Lewis, S. Maddox, C. McCoy, C. Miller, J. Miller, P. Minter, D. Osborne, R. Palumbo, P. Pratt, F. Rabourn, J. Raymond, R. Roberts, T. Smith, C. Stevenson, P. Stevenson, K. Timoney, S. Westrom, B. Wheatley, L. Willner

AMENDMENT SPONSOR(S): Rep. Roberts

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

SUMMARY OF LEGISLATION: Create various new sections of KRS 218A to define terms and establish a medicinal cannabis program; create a new section of KRS Chapter 138 to establish an excise tax on certain transfers of medicinal cannabis; amend KRS 139.470 to exempt the sale of medical cannabis from the state sales tax; amend KRS 138.870 to exempt medicinal cannabis from the excise tax on controlled substances; amend KRS 216B.402 to require hospital emergency departments to report cases of cannabinoid hyperemesis syndrome to the Department for Public Health; amend KRS 218A.010, 218A.1421, 218A.1422, and 218A.1423 to conform; amend KRS 218A.202 to require the Department for Public Health to utilize the electronic system for monitoring controlled substances to monitor medicinal cannabis; amend 218A.500 to conform; 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; some sections EFFECTIVE July 1, 2023; APPROPRIATION.

AMENDMENT: Retain original provisions; permit certain physician assistants to apply for authorization to provide written certifications for the use of medicinal cannabis; define "cannabis consultation agreement"; permit state licensing boards to intervene in the event that a physician becomes impaired by the use of medicinal cannabis; permit state licensing boards and the Kentucky Board of Pharmacy to enforce administrative regulations promulgated pursuant to this Act; revise the membership of the Board of Physicians and Advisors; revise language related to fees for authorization to provide written certifications for the use of medicinal cannabis, to provide medicinal cannabis consultation services to cardholders, and to enter into cannabis consultation agreements; EFFECTIVE, IN PART, July 1, 2023; APPROPRIATION.

AMENDMENT: Retain original provisions; add post-traumatic stress disorder to the list of approved medical conditions for which a medicinal cannabis practitioner may provide a written certification for the use of medicinal cannabis; APPROPRIATION.

AMENDMENT: Retain original provisions; amend immunity provisions related to the Kentucky Board of Pharmacy and pharmacists; replace nausea and vomiting with chronic nausea and cyclical vomiting on the list of approved medical conditions; make technical correction; effective January 1, 2023; APPROPRIATION.

AMENDMENT: Retain original provisions; require General Assembly approval of the list of medical conditions for which a medicinal cannabis practitioner may provide a patient with a written certification for the use of medicinal cannabis, effective January 1, 2023; APPROPRIATION.

This bill amendment committee substitute is expected to:

Have the following Corrections impact Have no Corrections impact

Creates new crime(s)

Repeals existing crime(s)

Increases penalty for existing crime(s)

Decreases penalty for existing crime(s)

Increases incarceration

Decreases incarceration

Reduces inmate/offender services

Increases inmate/offender services

Increases staff time or positions

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 \$97.60. Community Custody Class C and most Class D felons are housed in one of seventy-four (74) full service or regional jails for up to five (5) years. Department of Corrections' cost to incarcerate a felony inmate in a jail is \$35.43 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 medicinal cannabis. At a felony level, the impact to the Department of Corrections from the legislation is expected to be minimal to moderate.

Medicinal cannabis, under the legislation, is exempted from the criminal offenses of possession of marijuana, trafficking in marijuana, and cultivation of marijuana.

The legislation prescribes disqualifiers for felony convictions for certain positions within the medicinal cannabis regulatory structure. Individuals convicted of a disqualifying felony would not be eligible for a medicinal cannabis registry identification card. Disqualifying felonies are violent offenses, controlled substance sentences completed within the last five (5) years. Controlled substance offenses that would have been prevented by the current legislation and other state/federal convictions are excluded from the definition of disqualifying felonies.

The legislation adds monitoring of medicinal cannabis to the state's electronic system for monitoring controlled substances.

The elements of several offenses are modified to exclude actions that are authorized within the legislation for medicinal cannabis:

- ◆ KRS 218A.1421 Trafficking in Marijuana – penalty range 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 - penalty range 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 \$35.43 per day, while non-Community Custody Class C and Class B level offenders are housed at a prison facility at the higher rate of \$97.60 per day.

- ◆ Currently the Department of Corrections has 510 inmates incarcerated on marijuana related offenses:
 - 361 Trafficking in Marijuana,
 - 53 Cultivating Marijuana, and
 - 96 Possession convictions.*(Note: offenders may be incarcerated for other offenses or have multiple offenses.)*
- ◆ There are 5,003 community offenders on supervision for marijuana related offenses:
 - 1,931 Trafficking in Marijuana,
 - 366 Cultivating Marijuana, and
 - 2,706 Possession of Marijuana convictions.
- ◆ AOC records for FY 2021 reflect 289 Class D, sixty-one (61) Class C, and three (3) 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 costs 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 medicinal cannabis registration. That number cannot be determined because it is unknown how many people would qualify for medical cannabis.

The statutory changes would 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.	10 Class B Felons cost KY \$3,562,391.76 to \$7,124,783.52
1 Class B Felon costs KY \$356,239.18 to \$712,478.35	100 Class B Felons cost KY \$35,623,917.60 to \$71,247,835.20
A Class C Felony sentence is 5 to 10 years.	10 Class C Felons cost KY \$1,781,195.88 to \$3,562,391.76
1 Class C Felon costs KY \$178,119.59 to \$356,239.18	100 Class C Felons cost KY \$17,811,958.80 to \$35,623,917.60
A Class D Felony sentence is 1 to 5 years.	10 Class D Felons cost KY \$129,318.61 to \$646,593.03
1 Class D Felon costs KY \$12,931.86 to \$64,659.30	100 Class D Felons cost KY \$1,293,186.06 to \$6,465,930.31

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 \$35.43 cost to incarcerate for the Department of Corrections, including \$31.34 per diem and medical that DOC pays jails to house felony offenders. This cost to incarcerate may not be the actual housing cost for the jail.*

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

The estimated impact to local corrections under this legislation would be in the minimal to moderate range.

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

- ◆ AOC records for FY2021 show a total of 9,141 misdemeanor marijuana related convictions.
 - Of those, 8,249 convictions were specific to Possession of Marijuana.
- ◆ Individuals on community supervision under the Department of Corrections:
 - 2,706 supervised offenders with a conviction for Possession of Marijuana, and
 - 613 supervised offenders with misdemeanor Trafficking or Cultivating Marijuana convictions. (Note: offenders may have convictions for multiple offenses.)

The legislation creates a misdemeanor offense for breach of confidentiality of information. The number of convictions generated by this offense is expected to be limited with minimal impact to local corrections.

It is not possible to determine how many people would qualify for medical cannabis as authorized under this bill.

Any reduction in the number of convictions or incarceration stemming from marijuana offenses would be a cost savings to counties. A reduction of criminal charges at the felony level would reduce state inmates in jail beds, but would also reduce the amount of revenue in the form of \$31.34 per diem paid to local detention facilities for housing state inmates.

Cost to Incarcerate

A Class A misdemeanor is 90 days to 1 year in jail.	10 Class A misdemeanants: \$31,886.78 to \$129,318.61
1 Class A misdemeanant: \$3,188.68 to \$12,931.86	100 Class A misdemeanants: \$318,867.80 to \$1,293,186.06
A Class B misdemeanor is up to 90 days in jail.	10 Class B misdemeanants: up to \$31,886.78
1 Class B misdemeanant: up to \$3,188.68	100 Class B misdemeanants: up to \$318,867.80

PROJECTED IMPACT FROM AMENDMENTS:

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

House Committee Substitute:

There is no additional impact to state or local incarceration under the House Committee Substitute.

House Floor Amendments:

There are no additional impacts to state or local incarceration under the adopted House Floor 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

3/21/2022

Date