

# CORRECTIONS IMPACT STATEMENT

SESSION: 23RS BILL # HB 107 Introduced BR # 953 DOC ID #: xxxx

BILL SPONSOR(S): Rep. D. Graham, C. Stevenson, R. Roberts AMENDMENT SPONSOR(S): . .

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

**SUMMARY OF LEGISLATION:** Create new sections of KRS Chapter 218A to define terms and establish a medicinal cannabis program; 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 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, 218A.1423, and 218A.500 to conform; amend KRS 12.020 to reestablish the Department for Alcoholic Beverage Control as the Department for Alcoholic Beverage and Cannabis Control; amend KRS 12.252, 15.300, 15.380, 15.398, 15.420, 15A.340, 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; appropriate \$1,500,000 in fiscal year 2022-2023 for the creation of the Division of Medicinal Cannabis and the Division of Alcohol and Cannabis Enforcement; some sections EFFECTIVE July 1, 2023; APPROPRIATION.

**AMENDMENT:** .

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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         |
| <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 \$105.23. 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 \$40.11 per day, which includes \$35.34 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.

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 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 and controlled substance sentences completed within the last five (5) years. Controlled substance offenses that would have been prevented by the current legislation are excluded.

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

- ◆ **Section 37** - KRS 218A.1421 Trafficking in Marijuana – penalty range from Class A misdemeanor to a Class B felony depending on amounts and number of offenses.
- ◆ **Section 38** - KRS 218A.1422 Possession of Marijuana - Class B misdemeanor.
- ◆ **Section 39** - KRS 218A.1423 Cultivation of Marijuana - penalty range from Class A misdemeanor to a Class C felony depending on amounts and number of offenses.
- ◆ **Section 40** - 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 an estimated cost to incarcerate of \$40.11 per day, while non-Community Custody Class C and Class B level offenders are housed at a prison facility at the higher rate of \$105.23 per day.

- ◆ Currently the Department of Corrections has 540 inmates incarcerated on 600 marijuana related offenses:
  - 418 Trafficking in Marijuana,
  - 70 Cultivating Marijuana, and
  - 112 Possession convictions.*(Note: offenders may be incarcerated for other offenses or have multiple offenses.)*
  
- ◆ There are 4,912 community offenders on supervision for 5,250 marijuana related offenses:
  - 1,986 Trafficking in Marijuana,
  - 296 Cultivating Marijuana, and
  - 2,968 Possession of Marijuana convictions.
  
- ◆ AOC records for FY 2022 reflect 375 Class D, seventy-two (72) Class C, and two (2) Class B felony convictions for marijuana related offenses.

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 \$3,840,944.90 to \$7,681,889.80
1 Class B Felon costs KY \$384,094.49 to \$768,188.98	100 Class B Felons cost KY \$38,409,449.03 to \$76,818,898.06
A Class C Felony sentence is 5 to 10 years.	10 Class C Felons cost KY \$1,920,472.45 to \$3,840,944.90
1 Class C Felon costs KY \$192,047.24 to \$384,094.49	100 Class C Felons cost KY \$19,204,724.51 to \$38,409,449.03
A Class D Felony sentence is 1 to 5 years.	10 Class D Felons cost KY \$146,389.42 to \$731,947.13
1 Class D Felon costs KY \$14,638.94 to \$73,194.71	100 Class D Felons cost KY \$1,463,894.26 to \$7,319,471.31

**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 \$40.11 cost to incarcerate for the Department of Corrections, including \$35.34 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 of convictions for possession, trafficking, and/or cultivating marijuana.

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 \$35.34 per diem paid to local detention facilities for housing state inmates.

In Section 27 the legislation creates a misdemeanor offense for breach of confidentiality of information. Misdemeanors are subject to costs incurred by the county. 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.

- ◆ AOC records for FY2022 show a total of 10,246 misdemeanor marijuana related convictions.
  - Of those, 9,302 convictions were specific to Possession of Marijuana.
  
- ◆ Individuals on community supervision under the Department of Corrections:
  - 2,968 convictions for Possession of Marijuana, and
  - 624 misdemeanor convictions for Trafficking or Cultivating Marijuana.  
(Note: offenders may have convictions for multiple offenses.)

**Cost to Incarcerate**

A Class A misdemeanor is 90 days to 1 year in jail.	10 Class A misdemeanants: \$36,096.02 to \$146,389.42
1 Class A misdemeanant: \$3,609.60 to \$14,638.94	100 Class A misdemeanants: \$360,960.22 to \$1,463,894.26
A Class B misdemeanor is up to 90 days in jail.	10 Class B misdemeanants: up to \$36,096.02
1 Class B misdemeanant: up to \$3,609.60	100 Class B misdemeanants: up to \$360,960.22

**PROJECTED IMPACT FROM AMENDMENTS:**

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

*\*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

**2/1/2023**

Date