

CORRECTIONS IMPACT STATEMENT

SESSION: 23RS BILL # HB 22 Introduced BR # 238 DOC ID #: xxxx

BILL SPONSOR(S): Rep. R. Roberts AMENDMENT SPONSOR(S): . .

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

SUMMARY OF LEGISLATION: Establish KRS Chapter 245, relating to cannabis, to administer its cultivation, processing, transportation, sale, use, taxation, and licensing; define terms; establish the Cannabis Control Board and its membership, procedures, powers, and duties; direct the board to promulgate administrative regulations for the administration and enforcement of the chapter; set up advisory committees appointed by the board; create the Department of Cannabis Control within the Public Protection Cabinet for the oversight of cannabis operations and to provide administrative support for the board; establish various one-year business licenses under the chapter; grant administrative hearings under KRS Chapter 13B to appeal a license denial or revocation; forbid an employer from discriminating against applicants or employees who use cannabis outside of working hours as long as the use does not affect job performance; prohibit a person under the age of 21 from purchasing, possessing, consuming, or using cannabis; establish a revolving account called the "cannabis fund" to collect cannabis licensing fees, fines, excise taxes, and any other funds; form the Social Impact Council as a public agency authorized to distribute moneys from the cannabis fund; set council membership, procedures, powers, and duties; create new sections of KRS Chapter 138 to define terms; impose an excise tax at a rate set by the Cannabis Control Board on the first sale or transfer of harvested cannabis; establish excise tax reporting, collection, and liability; amend KRS 139.472 to exempt medical cannabis and accessories from sales and use taxes; create a new section of KRS Chapter 65 to authorize local governments to levy up to a 5% license fee on the gross receipts of a retailer or microbusiness; allow overlapping local governments to agree to levy a combined license fee, with set fee amounts absent an agreement; amend KRS 2.015 to require a person to be 21 years of age or older to purchase cannabis and its products and accessories; create new sections of KRS 218A and amend KRS 218A.1421, 218A.1422, 218A.1423, and 218A.500 to exempt licensed cannabis activities from criminal marijuana offenses; create a new section of KRS Chapter 431 to allow a person to petition the court to expunge the person's misdemeanor marijuana offenses; amend KRS 431.079 to exclude the expungement petition from the certification of eligibility requirement; amend KRS 131.1815 to notify the Cannabis Control Board if a cannabis licensee is a delinquent taxpayer; amend KRS 600.020 to include cannabis offenses in the list of juvenile status offenses; amend KRS 12.020 to add the governmental entities created in KRS Chapter 245 to the list of executive branch government bodies; set initial terms for members of the Cannabis Control Board and Social Impact Council; apply the excise tax beginning on July 1, 2024, and allow cannabis sales beginning on July 1, 2025; Section 31 of Act RETROACTIVE; APPROPRIATION.

AMENDMENT: .

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 checked="" 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)

This legislation establishing the regulation of cannabis would reduce the number of criminal convictions for possession, trafficking, and cultivation of cannabis. The legislation would result in a significant impact to the justice involved population. While it is not possible to estimate the extent, there would be individuals who continue to commit cannabis related offenses beyond the quantities specified under the legislation.

In addition to criminal penalties, the legislation establishes licensing, oversight, and taxation.

Section 13 contains prohibitions for minors (under the age of twenty-one (21)):

- ◆ Cannabis, cannabis products, and accessories may only be purchased, possessed, consumed, or used by a person aged twenty-one (21) or older.
- ◆ Licensees shall not sell or provide cannabis to a minor.

- ◆ Minors are restricted from entering a licensed cannabis establishment for the purchase or receipt of cannabis. This is established as a criminal violation.
- ◆ A minor shall not misrepresent his/her age to receive cannabis or cannabis products from a licensee. This is established as a criminal violation.
- ◆ A minor shall not use false identification or documentation to obtain cannabis. This is established as a criminal violation, with subsequent offenses subject to a Class B misdemeanor.
- ◆ If under the age of eighteen (18), these violations are status offenses.
- ◆ The penalties are not applicable for purchase for a minor under authorized medical cannabis.

Section 14 requires postings, to include the criminal penalties for minors. Section 24 adds the purchase of cannabis, products, and accessories as an exception to the age of majority.

Section 25 prohibits smoking of cannabis in public, subject to a maximum fine of \$100. Section 26 provides guidance for occupational licensing boards.

Section 27 redefines KRS 218A.1421 Trafficking in Marijuana to include trafficking or possession of cannabis not authorized within the legislation.

- ◆ Language is added prohibiting the provision of cannabis to another person outside of a cannabis license.
- ◆ The offense shall not apply to transfers of one (1) ounce or less of marijuana without payment between two (2) persons who may legally possess marijuana.
 - Trafficking in Marijuana ranges from a Class A misdemeanor to a Class B felony depending on the amount and offense number.

Section 28 redefines KRS 218A.1422 Possession of Marijuana:

- ◆ Unlawfully possessing more than one (1) ounce of marijuana while in a public place or possession of twelve (12) ounces or more of marijuana in a nonpublic place.
 - ◆ Possession of Marijuana is a Class B misdemeanor.

Section 29 modifies KRS 218A.1423 Marijuana Cultivation for those holding a license or permit to cultivate or grow under this legislation:

- ◆ Raising the previous cultivation limit of five (5) plants to more than ten (10) mature plants not authorized under the legislation. License holders are exempt.
- ◆ The Class C level of the felony is eliminated, establishing Marijuana Cultivation as a Class A misdemeanor and a Class D felony for a second or subsequent offense.
 - ◆ Under current statute, Marijuana Cultivation is a Class D or Class C felony depending on the number of plants and subsequent offenses.

Section 30 provides an exclusion to KRS 219A.500 Possession of Drug Paraphernalia for cannabis accessories and items used in the cultivation of cannabis licensed under the legislation.

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

Under Sections 31-32 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 34 adds cannabis offenses to the list of juvenile status offenses.

The legislation would allow adult use of cannabis beginning July 1, 2025.

- ◆ 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.

Class D and Community Custody Class C offenders 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.

The statutory changes as introduced will have an impact on supervision of offenders, substance abuse treatment, and drug testing/monitoring. There would be a minimal cost for the Department of Corrections to modify the offender management system. There would be a volume of work related to expungement, for both current and older records which may be eligible for expungement.

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 legislation would reduce cannabis related convictions, providing a significant impact to the court system. Some actions that would currently result in a court action would not be criminal or would be subject to a lower penalty, providing fewer offenses related to marijuana and possibly fewer incarcerated individuals, impacting both the county and state incarcerated population.

Any reduction in the number of convictions or incarceration stemming from marijuana offenses would be a cost savings to counties. The reduction of criminal charges at the felony level would reduce state inmates in jail beds and would reduce the amount of revenue in the form of \$35.34 per diem paid to local detention facilities for housing state inmates.

It is not known how many days of incarceration are incurred for misdemeanor marijuana related offenses, as these may be citable offenses or often accompany other charges for which an individual has been arrested or incarcerated.

- ◆ 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.
 - Possession of marijuana is a Class B misdemeanor, subject to county jurisdiction and costs.
- ◆ Current community supervision offenders have 2,968 convictions for Possession of Marijuana.
 - There are a total of 624 convictions for misdemeanor Trafficking or Cultivating Marijuana.
 - For example, of the Department of Corrections' current offenders on supervision for KRS 218A.1423 Cultivating in Marijuana convictions, 260 of the 296 convictions are for amounts five (5) plants or greater.

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)

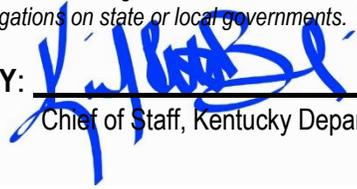
**All projections are based on the daily rate x 365 days x number of years. The cost to incarcerate as calculated by the Department is shown here as rounded to the hundredths. Offenders may have multiple offenses or be incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers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