

# CORRECTIONS IMPACT STATEMENT

SESSION: 23RS BILL # HB 47 Introduced BR # 414 DOC ID #: xxxx

BILL SPONSOR(S): Rep. N. Kulkarni AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to cannabis.

**SUMMARY OF LEGISLATION:** Create a new section of KRS Chapter 218A to make possession of a personal use quantity of cannabis exempt from civil or criminal penalty; amend KRS 218A.010 to define "cannabis," "personal use quantity of cannabis," and "cannabis accessory"; amend KRS 218A.1422 regarding cannabis possession to conform; amend KRS 218A.1423 regarding cannabis cultivation to conform; amend KRS 218A.500 regarding drug paraphernalia to exempt personal use cannabis accessories; amend KRS 218A.1421 on cannabis trafficking to exempt personal use quantities; amend KRS 138.872 to exclude personal use quantities from cannabis stamp tax; amend KRS 218A.410 and 533.030 to conform; create a new section of KRS Chapter 431 to allow expungement of certain convictions relating to cannabis; apply Section 10 retroactively.

**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) .                  |  |
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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 removes criminal penalties for personal amounts of cannabis related to possession, trafficking, or cultivation. At a felony level, the impact to the Department of Corrections from the legislation could be significant. The legislation would reduce the number of offenders receiving convictions for possession, trafficking, and cultivation, though there would be individuals who continue to commit cannabis related offenses beyond the quantities specified under the legislation.

In addition, personal amounts of cannabis shall not be grounds for revocation of community supervision or sanctioned as a violation of conditions of supervision.

Cannabis and marijuana are defined in KRS 218A.010. Personal use quantities are established as one (1) ounce or less of cannabis in plant form, five (5) grams or less of resin or concentrates derived from hemp or cannabis, 1,000 milligrams of cannabis products, and five (5) or less plants.

KRS 218A.1422 Possession of Marijuana is revised to unlawfully possessing more than personal use quantity of cannabis.

- ◆ Possession of Marijuana is a Class B misdemeanor.

KRS 218A.1421 Trafficking in Marijuana is revised to indicate an amount more than a personal amount of cannabis but less than eight (8) ounces.

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

KRS 218A.1423 Marijuana Cultivation is revised to indicate an amount of more than five (5) cannabis plants.

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

KRS 219A.500 Possession of Drug Paraphernalia is revised to establish an exception for cannabis accessories.

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

KRS 218A.410 prohibits forfeiture for personal use quantities. KRS 533.030 prohibits drug testing for cannabis as a condition of probation supervision. KRS 138.872 discusses marijuana stamp taxes for amounts other than personal use.

The legislation also establishes a retroactive expungement process for identified criminal marijuana related convictions for which the offense involved did not record a quantity of marijuana in excess of a personal quantity or a cannabis accessory. Eligible convictions include Possession of Marijuana, Trafficking less than eight ounces, Cultivation less than five (5) plants, and Drug Paraphernalia.

- ◆ 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.

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 D Felony sentence is 1 to 5 years.

1 Class D Felon costs KY \$14,638.94 to \$73,194.71

10 Class D Felons cost KY \$146,389.42 to \$731,947.13

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)

Under the legislation, cannabis could be possessed lawfully in small amounts, reducing the number of criminal convictions for Possession of Marijuana. This would provide a significant impact to the court system.

Under the legislation, an amount of possession of marijuana that currently would result in a district court action would not be criminal, 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.

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

- ◆ 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.
  
- ◆ 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.

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.

Cost to Incarcerate

A Class A misdemeanor is 90 days to 1 year in jail.  
1 Class A misdemeanor: \$3,609.60 to \$14,638.94

10 Class A misdemeanants: \$36,096.02 to \$146,389.42  
100 Class A misdemeanants: \$360,960.22 to \$1,463,894.26

A Class B misdemeanor is up to 90 days in jail.  
1 Class B misdemeanor: up to \$3,609.60

10 Class B misdemeanants: up to \$36,096.02  
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