

# CORRECTIONS IMPACT STATEMENT

SESSION: 23RS BILL # HB 48 Introduced BR # 415 DOC ID #: xxxx

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

TITLE: AN ACT proposing to create a new section of the Constitution of Kentucky relating to the possession of cannabis.

**SUMMARY OF LEGISLATION:** Propose to create a new section of the Kentucky Constitution to guarantee the right of an individual 21 years of age or older to possess, use, buy, or sell one ounce or less of cannabis and to cultivate, harvest, and store up to 5 cannabis plants for personal use; and for the production, processing, and sale of cannabis and cannabis-derived products to be controlled by the General Assembly; specify the question to be printed on the ballot; direct the Secretary of State to publish the proposed amendment in a newspaper of general circulation; direct the Secretary of State to certify the proposed amendment to the county clerk of each county.

**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 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 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 impact to the Department of Corrections from this legislation could be significant. The legislation proposes to place on the voter ballot a measure to amend the state constitution providing the right for an individual twenty-one (21) years of age or older to use, buy, or sell a specified amount of cannabis without criminal penalty.

The legislation would reduce criminal convictions surrounding possession, trafficking, and cultivation of marijuana. There would continue to be criminal actions for amounts that are higher than specified under the legislation (more than one (1) ounce or five (5) cannabis plants), though it is not possible to estimate how many future convictions would be incurred.

- ◆ It is not possible to identify amounts smaller than one (1) ounce for Trafficking in Marijuana as the misdemeanor statutory category in KRS 218A.1421 is less than eight (8) ounces.
- ◆ 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.
- ◆ Possession of Marijuana under KRS 218A.1422 does not have an associated amount.
  
- ◆ AOC records for FY 2022 reflect the following:
  - 1,196 convictions for Trafficking in Marijuana
  - 197 convictions for Cultivating in Marijuana
  - 9,302 convictions for Possession of Marijuana

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.

Legalization of small amounts of cannabis would reduce the number of cannabis 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 do so legally if the proposed constitutional amendment were to pass.

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

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)

The impact to local corrections under this legislation could be significant. Legalization of small amount of cannabis as proposed in this legislation would reduce the number misdemeanor convictions for possession, trafficking, and/or cultivating marijuana.

For example, it is likely that a number of the individuals currently on supervision for 2,968 Possession of Marijuana convictions may have involved amounts less than the amount specified in the legislation.

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.

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.

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)

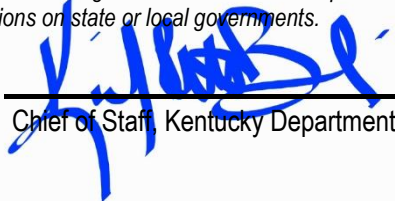
*\*All projections are based on the daily rate x 365 days x number of years. The cost to incarcerate as calculated by the Department is shown here as rounded to the hundredths. Offenders may have multiple offenses or be incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers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