



of marijuana, but that fact may be considered along with other evidence in determining the defendant's guilt or innocence.

**Section 3 through Section 7** provide conforming language and apply the same penalties to marijuana concentration violations that apply to other driving while intoxicated offenses. For the first offense an offender may be imprisoned in a county jail for between 48 hours and 30 days. For a second offense within a ten year period an offender shall be imprisoned in a county jail for between 7 days and 6 months. For a third offense the offender may be imprisoned in a county jail for 30 days to 12 months. A fourth offense or subsequent offenses constitute a Class D Felony.

**The expected fiscal impact of SB 228 GA is undeterminable because the number of expected offenders cannot be estimated.** According to the Kentucky State Police, blood tests are already utilized to determine marijuana concentration and therefore no new costs would be expected.

There may be costs associated with any additional arrests or convictions that result from SB 228 GA. Misdemeanants are housed in one of Kentucky's 74 full-service jails or three life safety jails. While the expense of housing inmates varies by jail, this estimated impact will be based on an average cost to incarcerate of \$40.11 per day. While the majority of misdemeanor defendants are granted bail, those who do are not will also cost local jails an average cost to incarcerate of \$40.11 per day.

When a court denies bail to a Class D felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 74 full- service jails or three life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an average cost to incarcerate of \$40.11 per day to incarcerate, which includes the \$35.34 per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. Upon sentencing, a Class D felon is housed in one of Kentucky's full- service jails for the duration of his or her sentence. The Department of Corrections pays a jail \$35.34 per day to house a Class D felon. The per diem may be less than, equal to, or greater than the actual housing cost.

### **Part III: Differences to Local Government Mandate Statement from Prior Versions**

Part II refers to SB 228 GA which kept most provisions of SB 228 SCS 1 excluding two changes in **Section 2**. A breath test is no longer included as a scientific test that may indicate that a person is operating a motor vehicle with a marijuana concentration in excess of what would be considered driving under the influence of marijuana. Breath tests are also no longer included in language describing when marijuana intoxication can be presumed during prosecution for driving under the influence. These changes do not affect the fiscal impact of SB 228 GA on local government.

SB 228 SCS 1 added provisions to **Section 2** of SB 228 to describe how marijuana concentrations of less than 5 shall be interpreted during any prosecution of a defendant accused of driving under the influence of marijuana.

**Data Source(s):** LRC Staff, Kentucky State Police; Kentucky Department of Corrections

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