

# CORRECTIONS IMPACT STATEMENT

SESSION: 23RS BILL # SB 47 SCS 1 BR # 1003 DOC ID #: xxxx

BILL SPONSOR(S): Sen. S. West, P. Wheeler, J. Higdon, S. Meredith, M. Nemes, B. Smith, R. Webb

AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to medicinal cannabis.

**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 216B.402 to require hospital emergency departments to report cases of cannabinoid hyperemesis syndrome to the Department of Alcoholic Beverage and Cannabis Control; amend KRS 218A.010, 218A.1421, 218A.1422, 218A.1423, and 218A.500 to conform; amend KRS 12.020, 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 change the name of the Department of Alcoholic Beverage Control to the Department of Alcoholic Beverage and Cannabis Control; some sections EFFECTIVE July 1, 2024.

**AMENDMENT:** .

**SCS1:** Retain original provisions; delete references and provisions related to the Department for Alcoholic Beverage Control; establish the Cabinet for Health and Family Services as the entity responsible for implementing, administering, and overseeing the medicinal cannabis program; delete provisions related to pharmacists; establish list of qualifying medical conditions; require visiting qualified patients to provide documentation of having been diagnosed with a qualifying medical condition; revise the makeup of the Board of Physicians and Advisors; require Senate confirmation of members of the Board of Physicians and Advisors; establish cause of action for a registered qualified patient who is injured or defrauded by his or her designated caregiver; delete provisions related to landlords and rental agreements; require administrative regulations promulgated by state licensing boards and the Cabinet for Health and Family Services to be promulgated by July 1, 2024 instead of January 1, 2024; establish provisions to require the approval of a designated caregiver who has been appointed as a guardian, limited guardian, conservator, or limited conservator; require a qualified patient under the age of 18 to receive a confirmatory diagnosis from a practitioner other than the medicinal cannabis practitioner who provided the patient with a written certification for the use of medicinal cannabis; permit the Cabinet for Health and Family Services to retain application and licensure fees for administrative purposes; require the Cabinet for Health and Family Services to notify local governments of approved cannabis licenses for cannabis businesses that would be located inside the local governments jurisdiction; delete provisions related to a competitive application process for cannabis business licenses; delete provisions requiring the development of an electronic system for monitoring the medicinal cannabis program; establish provisions to permit the Kentucky Center for Cannabis to approve additional qualifying medical conditions; amend KRS 138.870 to exempt medicinal cannabis from the excise tax on marijuana; amend KRS 139.480 to exempt medicinal cannabis from the state sales tax; amend KRS 218A.202 to permit the use of the electronic monitoring system for controlled substances for monitoring the medicinal cannabis program; some sections EFFECTIVE January 1, 2025.

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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 decrease.

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.

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. There are 4,912 community offenders on supervision for 5,250 marijuana related offenses.

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

Class D felons are housed in a county jail and DOC pays counties a per diem for housing those inmates. A Class D Felony sentence is 1 to 5 years – One (1) Class D Felon costs KY \$14,638.94 to \$73,194.71.

Class C felons may still be able to serve their time in a county jail, but only if community custody. A Class C Felony sentence is 5 to 10 years – One (1) Class C Felon costs KY \$192,047.24 to \$384,094.49

Class A and B felons will serve time in state prison. A Class B Felony sentence is 10 to 20 years – One (1) Class B Felon costs KY \$384,094.49 to \$768,188.98  
A Class A Felony sentence is 20 years or more – One (1) Class A Felon costs KY a minimum of \$768,188.98

**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 decrease. 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.

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

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

**PROJECTED IMPACT FROM AMENDMENTS:**

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

There is no additional impact from the SCS 1.

*\*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

3/16/2023

Date