



**Section 8** establishes a process for the expungement of convictions for the trafficking, possession, or cultivation of marijuana when the available record does not indicate that the offense involved a quantity in excess of either eight ounces of marijuana or five plants of marijuana. The Administrative Office of the Courts is required to identify all eligible convictions and communicate them to the office of the Commonwealth's attorney or county attorney that prosecuted the case within 90 days of the effective date of the Act. If no objection is filed within 200 days of the Act's effective date, the court must vacate the judgment and expunge all related records. Individuals with eligible convictions can petition for expungement one year after the Act's effective date. There is no filing fee, and a response to the petition must be filed within 90 days. If no response is filed, or if the court finds the conviction expungable, it will order the judgment vacated and charges dismissed. Upon expungement, the conviction is vacated and removed from records, including computer systems, ensuring it does not appear in state-performed background checks. The expunged conviction need not be disclosed in applications, and if the conviction was a felony, the person's voting rights are restored.

**The expected fiscal impact of SB 73 is expected to be positive.** From 2019 to 2023, there were 4,028 convicted cases of trafficking less than 8 ounces of marijuana and 1,782 of cultivating less than 5 plants of marijuana. Current statute does not differentiate unlawful possession of marijuana based on the quantity possessed, but over the same time period there were 43,623 convicted cases of possession of any amount of marijuana. It is not known how many of these cases resulted in incarceration in local jails, but there is an associated cost for every day an inmate is housed there. Decriminalizing trafficking, possessing, and cultivating certain quantities of marijuana would result in cost savings to local jails for each day a person is not incarcerated as a result of SB 73. Though the expungement of past convictions for trafficking, possessing, or cultivating marijuana could require additional work for county attorneys or local courts to comply with Section 8 of the bill, it is not clear if this would result in a fiscal expense via increased employment costs.

The cost of housing inmates in local jails depends on the level of offense. A person convicted of a Class B misdemeanor may be incarcerated for up to 90 days. A person convicted of a Class A misdemeanor may be incarcerated for up to twelve months. 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 \$44.97 per day. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average cost to incarcerate of \$44.97 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 \$44.97, 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.

When a court denies bail to a Class C 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 \$44.97, which includes the \$35.34 per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. Class C felons are ineligible for placement in local jails until they are classified at the lowest custody level with 24 months or less to their minimum expiration date or parole eligibility date. The Department of Corrections pays local jails \$35.34 per day to house these Class C felons. The per diem may be less than, equal to, or greater than the actual housing cost.

**Data Source(s):** LRC Staff; Administrative Office of the Courts; Kentucky Department of Corrections

**Preparer:** Ryan Brown (BL)      **Reviewer:** KHC      **Date:** 1/17/24