

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 9, 2017

TO: Honorable Joe Moody, Chair, House Committee on Criminal Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB81 by Moody (Relating to the civil and criminal penalties for possession of certain small amounts of marihuana and an exception to prosecution for possession of associated drug paraphernalia; creating a criminal offense.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB81, Committee Report 1st House, Substituted: a positive impact of \$4,266,206 through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	\$2,133,103
2019	\$2,133,103
2020	\$2,133,103
2021	\$2,133,103
2022	\$2,133,103

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Probable Revenue (Loss) from <i>Various General Revenue</i> <i>Dedicated Accounts</i>	Probable Revenue (Loss) from <i>Judicial Fund</i> 573
2018	\$2,133,103	(\$1,211,775)	(\$279,640)
2019	\$2,133,103	(\$1,211,775)	(\$279,640)
2020	\$2,133,103	(\$1,211,775)	(\$279,640)
2021	\$2,133,103	(\$1,211,775)	(\$279,640)
2022	\$2,133,103	(\$1,211,775)	(\$279,640)

Fiscal Analysis

The bill would amend the Health and Safety Code to decriminalize the first three offenses of possession of one ounce or less of marihuana and would create a criminal offense for the 4th and subsequent possessions of that amount. The bill would create an offense as a Class C misdemeanor for a person knowingly or intentionally possessing a usable quantity of marihuana in an amount that is one ounce or less if the person was previously assessed a civil penalty three times and would require the court to suspend the proceedings and refer the case to the prosecuting attorney in these situations.

Possession of one ounce or less for the first three offenses would make the possessor liable to the State for a civil penalty not to exceed \$250. However, a court must waive the penalty if a court finds a person subject to the penalty to be indigent and may assign the person to no more than 10 hours of community service. In addition, the bill would require a person to attend an educational program on their second and third possession violations.

Under the bill, the court also would be authorized to waive the civil penalty if the person cited for possession either: (1) completes a substance abuse program; or (2) performs up to ten hours of community service as recommended by the court. In addition, the bill would allow a court to suspend a sentence and place a defendant on probation under Article 45.051 of the Code of Criminal Procedure.

Because the bill does not specify where the money collected from the civil penalty goes other than to say that the possessor of the marihuana would be liable to the State for a civil penalty, in this analysis it is assumed 100 percent of the civil fee revenue would be directed to the state (General Revenue), rather than remain with the county.

By decriminalizing the cases described above, it is estimated that court cost revenue loss would be \$1,553,558 each fiscal year in All Funds, offset by a revenue gain in civil penalties of \$2,195,245 each fiscal year in General Revenue.

The bill would take effect September 1, 2017.

Methodology

Based upon historical records, the Office of Court Administration estimates that in fiscal year 2016 there were 33,773 convictions or orders of deferred adjudication in possession cases involving one ounce or less of marihuana, a Class B misdemeanor. Assuming a similar caseload in future years, the resulting loss in state revenue from the average court costs for a Class B misdemeanor are anticipated to be \$115 per case, or \$3,883,895 ($\$115 \times 33,773$), adjusted by a 40 percent collection rate for Class B misdemeanors ($0.40 \times \$3,883,895$), for a total of \$1,553,558 each fiscal year in forgone court-cost revenues. Court costs are deposited to numerous state accounts, including General Revenue (4 percent of \$115, or \$62,142 of \$1,553,558); various General Revenue-Dedicated Accounts (78 percent of \$115, or \$1,211,775 of \$1,553,558); and the Judicial Fund No. 573 (18 percent of \$115, or \$279,640 of \$1,553,558).

The table above summarizes the fiscal impact for various General Revenue-Dedicated accounts that would see a revenue loss which include, but are not limited to: the Fair Defense Account, the Criminal Justice Planning Fund, and the Emergency Radio Infrastructure Fund.

This court cost revenue loss would be offset by a maximum \$250 civil penalty assessed in those cases where a person was not instead 1) found to be indigent or 2) directed to attend a substance abuse program or performance community service. Assuming 50 percent of the 33,773 expected cases are assessed the maximum civil penalty of \$250 would result in an annual revenue gain of

\$4,221,625. However, for purposes of this analysis, it is assumed judges statewide might assess instead on average a \$81.25 civil penalty, which in 33,773 cases equates to \$2,744,056. Assuming that 20 percent of persons subject to the penalty instead would be found indigent or given deferred adjudication reduces expected revenue to \$2,195,245 (0.80 * \$2,744,056).

Assuming 100 percent of civil filing fees are deposited to General Revenue, the bill would result in a net revenue gain to the General Revenue account of \$2,133,103 each fiscal year (\$2,195,245 - \$62,142), offset by revenue losses to other state accounts.

According to the Office of Court Administration, the number of convictions for a defendant's 4th or subsequent conviction cannot be determined; however, the agency does not anticipate this number to be significant. Based on the analysis of the Department of Public Safety, Department of State Health Services, and Juvenile Justice Department, duties and responsibilities associated with implementing the remaining provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

According to the Office of Court Administration (OCA), the bill would result in 56,086 new cases being handled by justice courts as civil cases instead of county-level courts as criminal cases. There will also be a corresponding decrease in the workload of the county-level courts. OCA estimates the loss to counties from the loss of criminal court cost revenue to be \$1,925,061 annually. Additionally, OCA estimates the loss to counties from criminal fine revenue to be \$5,448,113 per year, assuming the average fine to be \$250 and a 65 percent collection rate. Since court appointed counsel must be provided for Class B misdemeanors, but not civil cases, OCA anticipates there may be a positive fiscal impact to the counties due to a reduction in the costs of court appointed counsel.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 644 Juvenile Justice Department, 405 Department of Public Safety, 537 State Health Services, Department of

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