

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

March 27, 2019

TO: Honorable Nicole Collier, Chair, House Committee on Criminal Jurisprudence

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
 Legislative Budget Board

IN RE: HB63 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 HB63, Committee Report 1st House, Substituted: a positive impact of \$5,262,202 through the biennium ending August 31, 2021.

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
2020	\$2,631,101
2021	\$2,631,101
2022	\$2,631,101
2023	\$2,631,101
2024	\$2,631,101

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
2020	\$2,631,101	(\$1,413,626)	(\$273,187)
2021	\$2,631,101	(\$1,413,626)	(\$273,187)
2022	\$2,631,101	(\$1,413,626)	(\$273,187)
2023	\$2,631,101	(\$1,413,626)	(\$273,187)
2024	\$2,631,101	(\$1,413,626)	(\$273,187)

Fiscal Analysis

The bill would amend the Health and Safety Code to decriminalize possession of one ounce or less of marihuana. Instead, possession of one ounce or less 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.

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.

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 \$1,734,523 each fiscal year in All Funds, offset by a revenue gain in civil penalties of \$2,678,000 each fiscal year in General Revenue.

The bill would take effect September 1, 2019.

Methodology

Based upon historical records, the Office of Court Administration estimates that in fiscal year 2018 there were 33,485 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 \$129.50 per case, or \$4,336,308 ($\$129.50 \times 33,485$), adjusted by a 40 percent collection rate for Class B misdemeanors ($0.40 \times \$4,336,308$), for a total of \$1,734,523 each fiscal year in forgone court-cost revenues. Court costs are deposited to numerous state accounts, including General Revenue (2.8 percent of \$129.50, or \$47,699 of \$1,734,523); various General Revenue-Dedicated Accounts (81.5 percent of \$129.50, or \$1,413,636 of \$1,734,523); and the Judicial Fund No. 573 (15.8 percent of \$129.50, or \$273,187 of \$1,734,523).

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 and other funds which receive court cost revenue from the Consolidated Court Cost pursuant to Government Code, Section 133.102.

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 or the court determines that the penalty is uncollectable. A maximum fine of up to \$2,000 may be imposed on a Class B Possession of Marihuana case, however for purposes of this analysis it is assumed judges statewide might, instead, assess an average \$250 civil penalty and assumes a 40 percent collection rate, which in 33,485 cases equates to \$2,678,800 ($33,458 \text{ cases} \times \$250 \text{ per case} \times 40\% \text{ collection rate} = \$2,678,800$).

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 \$2,631,101 each fiscal year ($\$2,678,800 -$

\$47,699).

This estimate assumes costs associated with the Department of State Health Services, Texas Department of Licensing and Regulation, Juvenile Justice Department, and Department of Public Safety can be absorbed with existing resources.

Local Government Impact

The bill would reduce possession of a certain amount of marihuana to a civil penalty. According to the Office of Court Administration (OCA), court cost revenue loss for local governments is estimated at \$1,908,645 and loss in revenue from fines would be \$2,678,800. These losses are estimated to be offset by \$3,688,775 in savings due to a decrease in the costs of court appointed counsel.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 405 Department of Public Safety, 452 Department of Licensing and Regulation, 529 Health and Human Services Commission, 537 State Health Services, Department of, 644 Juvenile Justice Department

LBB Staff: WP, LBO, GDz, LCO, SB, ND, DFR, AF, NA, JPo, MW, SD, LM, JGa