

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 1, 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: HB371 by Allen (Relating to the prosecution of and penalties for possession of one ounce or less of marihuana.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB371, As Introduced: a negative impact of (\$832,390) through the biennium ending August 31, 2021; however, there are impacts to several General Revenue-Dedicated accounts and Other Funds under this bill's provisions as listed below.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	(\$416,195)
2021	(\$416,195)
2022	(\$416,195)
2023	(\$416,195)
2024	(\$416,195)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>Judicial Fund</i> 573	Probable Revenue Gain/(Loss) from <i>Various General Revenue- Dedicated Accounts</i>
2020	(\$416,195)	(\$233,475)	(\$466,443)
2021	(\$416,195)	(\$233,475)	(\$466,443)
2022	(\$416,195)	(\$233,475)	(\$466,443)
2023	(\$416,195)	(\$233,475)	(\$466,443)
2024	(\$416,195)	(\$233,475)	(\$466,443)

Fiscal Analysis

The bill would amend various codes as they relate to the penalties for the criminal offense of possession of one ounce or less of marihuana. The bill would reduce the penalty for possession of one ounce or less of marihuana from a Class B misdemeanor to a Class C misdemeanor and modify

the Class B misdemeanor to possession of two ounces or less but more than one ounce. The bill would also allow for possession of one ounce of marihuana or less to be enhanced in certain circumstances.

Methodology

Reducing the penalties for any criminal offense is expected to result in fewer demands upon the correctional resources of counties or of the State due to a decrease in the number of people placed under misdemeanor community supervision. The bill may have a positive population impact by decreasing the number of people under misdemeanor community supervision. Whether the bill would result in a significant fiscal impact to state criminal justice populations is indeterminate due the lack of data that would allow those cases in which the amount of marihuana possessed was less than or equal to one ounce to be isolated from all other cases within the penalty range which currently covers two ounces or less. In fiscal year 2018, 13,391 people were placed under misdemeanor community supervision for possession of two ounces or less of marihuana. Under the provisions of the bill, some of these individuals would no longer be placed under misdemeanor community supervision. The fiscal implications due to the reduction in placements onto misdemeanor community supervision cannot be determined.

Based upon case data from fiscal year 2018 and assuming a similar caseload in future years, the Office of Court Administration estimates there were 39,164 convictions or orders of deferred adjudication in new Class A or B possession cases. According to the Department of Public Safety, 96 percent of convictions for Class A and B misdemeanor possession cases were for Class B possession of less than two ounces of marihuana, resulting in a total of 37,597 convictions or deferred adjudications. The portion of this caseload involving cases of an ounce or less of marihuana is unknown; however, the OCA estimate assumes 90 percent of these cases involved an ounce or less of marihuana resulting in a total of 33,837 convictions or deferred adjudications.

Total court costs vary depending on the county and any additional services performed. The estimate provided by OCA assumes an average court cost of \$272 for Class B misdemeanors of which \$129.50 is remitted to the State and \$142.50 is retained by the county. Assuming a collection rate of 55 percent for county courts, the State would realize an annual revenue loss of \$2,410,040 (33,837 convictions x \$129.50 x 55 percent collection rate) from court cost revenue that would previously have been collected for Class B possession cases, but which would not be collected under the provisions of the bill. This includes an estimated revenue loss to the General Revenue Fund and the Judicial Fund, \$446,648 and \$279,155 respectively.

The estimate provided by OCA assumes average court cost of \$67 for Class C misdemeanors of which \$47.80 is remitted to the State and \$19.20 is retained by the county. Assuming a collection rate of 80 percent for county courts, the State would realize an annual revenue gain of \$1,293,927 (37,597 convictions x \$47.80 x 80 percent collection rate) from court cost revenue that would now be collected for Class C possession cases under the provisions of the bill. This includes an estimated revenue gain to the General Revenue Fund and the Judicial Fund, \$30,453 and \$45,680 respectively.

In addition to impacts to the General Revenue Fund and Judicial Fund No. 573 as shown above, the following General Revenue-Dedicated accounts would see annual revenue impacts as shown in the table below. This includes revenue collected through the consolidated court cost which is distributed to various General Revenue-Dedicated accounts pursuant to Local Government Code 133.102.

General Revenue-Dedicated Account	Revenue Impact
Breath Alcohol Testing, Account 5013	\$ (2,289)
Center for Study and Prevention of Juvenile Crime & Delinquency, Account 5029	\$ (5,026)
Correctional Management Institute of Texas, Account 5083	\$ (5,026)
Crime Stoppers Assistance, Account 5012	\$ (1,073)
Crime Victims Compensation, Account 469	\$ (156,439)
Criminal Justice Planning, Account 421	\$ (52,184)
Emergency Radio Infrastructure Fund, Account 5153	\$ (23,239)
Fair Defense, Account 5073	\$ (58,952)
Judicial and Court Personnel Training, Account 540	\$ (20,103)

Law Enforcement Management Institute, Account 581	\$ (9,013)
Law Enforcement Retirement Fund, Account 977	\$ (46,318)
Law Officer Standards and Education, Account 116	\$ (20,799)
Statewide Electronic Filing System, Account 5157	\$ (93,052)
Truancy Prevention and Diversion, Account 5164	\$ 27,070
Total	\$ (466,443)

Local Government Impact

According to OCA, a revenue loss is anticipated to local governments of an estimated \$4,821,773 from the reduction of Class B misdemeanor cases to Class C misdemeanor cases. However, revenue from collections in the Class C cases will offset the loss by an estimated \$649,670. In addition, OCA estimates a savings of \$6,532,496 in fees paid to court appointed counsel. Additionally, decreases in cost associated with confining defendants and placing defendants on probation, which is a typical punishment in cases involving small amounts of marihuana, will offset any losses. Although counties may see a decrease in revenue from fines, as the maximum fine in a Class C misdemeanor is \$500, whereas the maximum fine in a Class B misdemeanor is \$2,000; counties will be able to offset losses by imposing a special expense fee on defendants receiving deferred disposition in the Class C cases.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 696 Department of Criminal Justice

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