

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: HB1206 by Cole (Relating to the prosecution of and penalties for possession of marihuana.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1206, As Introduced: a positive impact of \$9,310,020 through the biennium ending August 31, 2021. However there are impacts to several General Revenue-Dedicated accounts and Other Funds under the bill's provisions as listed below.

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	\$1,553,300
2021	\$7,756,720
2022	\$10,467,350
2023	\$11,299,767
2024	\$11,348,679

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1	Probable Revenue Gain/(Loss) from General Revenue Fund 1	Probable Revenue Gain/(Loss) from Various General Revenue-Dedicated Accounts	Probable Revenue Gain/(Loss) from Judicial Fund 573
2020	\$2,015,743	(\$462,443)	(\$1,448,800)	\$50,756
2021	\$8,219,163	(\$462,443)	(\$1,448,800)	\$50,756
2022	\$10,929,793	(\$462,443)	(\$1,448,800)	\$50,756
2023	\$11,762,210	(\$462,443)	(\$1,448,800)	\$50,756
2024	\$11,811,122	(\$462,443)	(\$1,448,800)	\$50,756

Fiscal Analysis

The bill would amend the Health and Safety Code and Code of Criminal Procedure to reduce the punishment levels for certain possession of marihuana offenses. Under the provisions of the bill, punishment for the possession of marihuana would range from a class C misdemeanor to a second degree felony. The punishment for possession of marihuana under current statute begins at a class B misdemeanor and extends through that of a first degree felony with the punishment level based on the amount of marihuana possessed.

Methodology

Reducing the penalties for this 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 community supervision a decrease in the length of stay on community supervision, a decrease in the number of people admitted to state correctional facilities, and a decrease in the length of stay in correctional facilities. In fiscal year 2018, 14,551 people were placed under community supervision that would be impacted by the provisions of the bill. Under the provisions of the bill, many of these individuals would no longer be placed under community supervision and many others would have their length of stay on community supervision reduced. Community Supervision and Corrections Departments receive \$0.70 per misdemeanor placement for 182 days, and receive state funds for felony community supervision for the entire length of stay. In fiscal year 2018, 732 people were admitted to state correctional agencies that would be impacted by the provisions of the bill. Under the provisions of the bill, many of these individuals would be placed on community supervision instead or would have their lengths of stay in incarceration facilities reduced. Savings and costs for incarceration are calculated at \$52.46 per day for state jail and \$62.34 per day for prison. Savings and costs for community supervision are calculated at \$0.70 per misdemeanor placement for 182 days and \$1.92 for felony community supervision. These costs are based on the LBB's *January 2019 Criminal and Juvenile Justice Uniform Cost Report*.

Net impact to the adult correctional agencies for fiscal year 2020 are estimated to be \$1,553,300 and \$7,756,720 during fiscal year 2021. This analysis assumes the bill's provisions would reach partial implementation in fiscal year 2020 and reach full implementation in fiscal years 2021 and beyond.

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.

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 \$496,280 revenue loss to the General Revenue Fund. 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 annual estimated revenue gain to the General Revenue Fund and the Judicial Fund, \$33,837 and \$50,756 respectively.

According to Department of Public Safety for fiscal year 2016, there were 1,324 state jail felony possession convictions. Under the bill's provisions, these convictions would become Class A misdemeanor offenses. The estimate provided by OCA assumes an average court cost of \$294 for state jail felony convictions of which \$159.50 is remitted to the state and \$134.50 is retained by the county. Assuming a collection rate of 55 percent for county courts the state would realize an annual revenue loss of \$3,298,197 (37,597 convictions x \$159.50 x 55 percent collection rate) from court cost revenue that would previously have been collected for state jail

felony possessionions, but which would not be collected under the provisions of the bill. This revenue decrease would be offset by a revenue gain resulting from transition of these cases from a state jail felony to Class A misdemeanor. The estimate provided by OCA assumes an average court cost of \$272 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 gain of \$2,677,846 (37,597 convictions x \$129.50 x 55 percent collection rate) from court cost revenue that would now be collected for Class A possession cases under the provisions of the bill.

In addition to impacts to the General Revenue Fund and Judicial Fund No. 573 (Other Funds) 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.

Annual Impact by General Revenue-Dedicated Account	Net Impact
Breath Alcohol Testing, Account 5013	\$ (7,668)
Center for Study and Prevention of Juvenile Crime & Delinquency, Account 5029	\$ (16,834)
Correctional Management Institute of Texas, Account 5083	\$ (16,834)
Crime Stoppers Assistance, Account 5012	\$ (3,594)
Crime Victims Compensation, Account 469	\$ (524,015)
Criminal Justice Planning, Account 421	\$ (174,798)
Emergency Radio Infrastructure Fund, Account 5153	\$ (77,841)
Fair Defense, Account 5073	\$ (231,553)
Judicial and Court Personnel Training, Account 540	\$ (67,339)
Law Enforcement Management Institute, Account 581	\$ (30,192)
Law Enforcement Retirement Fund, Account 977	\$ (155,150)
Law Officer Standards and Education, Account 116	\$ (69,668)
Statewide Electronic Filing System, Account 5157	\$ (103,392)
Truancy Prevention and Diversion, Account 5164	\$ 30,078
Total General Revenue-Dedicated:	\$ (1,448,800)

Local Government Impact

The Office of Court Administration anticipates that local governments will see an annual loss of revenue of \$4,334,934 but will see an annual savings of \$6,523,496 from Attorneys' fees.

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

LBB Staff: WP, LBO, LM, JPo, GDz, AF, LCO