

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION**

**April 20, 2021**

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

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB99** by Toth (Relating to the possession of two ounces or less of marihuana; authorizing a fee.),  
**Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB99, Committee Report 1st House, Substituted : a positive impact of \$1,522,860 through the biennium ending August 31, 2023.

In addition, the bill would have a negative impact to revenues received through the Consolidated Court Cost that includes (\$1,302,000) in various General Revenue-Dedicated Accounts and (\$457,000) in various Other Funds.

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:**

<i>Fiscal Year</i>	<i>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</i>
2022	\$343,773
2023	\$1,179,087
2024	\$1,139,501
2025	\$1,097,014
2026	\$1,054,100

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	<i>Probable Savings/(Cost) from General Revenue Fund 1</i>	<i>Probable Revenue Gain/(Loss) from Various General Revenue-Dedicated Accounts</i>	<i>Probable Revenue Gain/(Loss) from Other Funds, estimated 997</i>
2022	\$343,773	(\$667,000)	(\$235,000)
2023	\$1,179,087	(\$635,000)	(\$222,000)
2024	\$1,139,501	(\$602,000)	(\$211,000)
2025	\$1,097,014	(\$574,000)	(\$201,000)
2026	\$1,054,100	(\$544,000)	(\$190,000)

**Fiscal Analysis**

The bill amends several statutes to reduce the penalty for and criminal consequences of possessing two ounces or less of marihuana, including amending: (1) the Code of Criminal Procedure Article 14.01 to prevent the warrantless arrest of a person possessing two ounces or less of marihuana; (2) the Controlled Substances Act to

reduce the punishment for possession of two ounces or less of marihuana from a Class B to a Class C misdemeanor; (3) the Controlled Substances Act to prohibit enhancement when possession of two ounces or less of marihuana occurs in, on, or near a school, playground, or youth center, or on a school bus; and (4) the Transportation Code to prevent automatic license suspension when a person is convicted of possessing two ounces or less of marihuana and to authorize the Department of Public Safety to issue a driver's license for a person convicted of possessing two ounces or less of marihuana, regardless of whether that person held a driver's license on the date of his or her conviction.

The bill would amend the Code of Criminal Procedure to require courts to give deferred disposition to a person who commits certain Class C misdemeanors, unless the person has previously received deferred disposition for one of the offenses committed within the previous 12-months period prior to the date of the offense.

Except as provided by certain conditions enumerated by the bill, the bill would take effect September 1, 2021.

## **Methodology**

This estimate is based on data provided by the Office of Court Administration and Department of Public Safety, and the analysis of the Comptroller of Public Accounts.

From fiscal years 2014 through 2019, the monthly average for the number of convictions for new Class A and B possession of marihuana cases was 3,382. This monthly average decreased in the pre-pandemic months of fiscal year 2020 (September through February) to 1,750. Convictions in subsequent months after March of fiscal year 2020 for these same offenses decreased substantially primarily due to the pandemic.

This estimate makes the following assumptions: that conviction rates will remain at pre-pandemic fiscal year 2020 levels for the 2022–23 biennium and in subsequent years, a 45 percent collection rate on court costs imposed on criminal offenses, and that 90 percent of consolidated court cost revenue will be remitted to the state and 10 percent will be retained locally to cover administrative costs.

Under the provisions of the bill, DPS would not be permitted to automatically suspend or deny issuance of a driver license to persons convicted of possessing two ounces or less of marihuana and for which the agency could later assess a \$100 driver license reinstatement fee for offenders seeking reinstatement. The loss of this fee revenue to DPS will have a negative, but indeterminate, fiscal impact to the state. The number of persons no longer convicted for marihuana possession under the provisions of the bill and that would have had to pay a fee to have their driver license reinstated under current law cannot be estimated. Additionally, the timing of the collection of certain fees related to the suspension and reinstatement of driver's licenses could be affected. However, the amounts of those changes cannot be determined.

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 misdemeanor community supervision. From fiscal years 2018 through 2020, an average of 9,422 people were placed onto misdemeanor community supervision for possession of two ounces or less of marihuana. Under the provisions of the bill, these individuals would no longer be placed under community supervision. Community supervision and corrections departments are funded \$0.70 per misdemeanor placement for 182 days. The savings include a time lag from the commission of the offense to placement and are calculated by multiplying the adjusted placements based on the projections published in the January 2021 Adult and Juvenile Correctional Population Projections by 182 days and \$0.70. These estimates are based on the assumption that arrests, court activity, sentencing, and other criminal justice system processes will return to pre-COVID-19 pandemic functions by the end of fiscal year 2022.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature

The implementation of this bill depends on certain steps taken by the Legislature, Governor, and the U.S. Secretary of Transportation. Whether the U.S. Secretary of Transportation would certify, and the timeframe in which the Secretary would certify, that the passage of the bill would not lead to a withholding of federal

highway funds is unknown. Therefore, the fiscal implication of those sections of the bill cannot be determined.

### **Local Government Impact**

OCA anticipates a revenue loss of approximately **\$487,816** (loss of \$598,518 in Class B revenue and \$110,702 gain in Class C revenue). OCA estimates a savings of **\$2,632,101** in county costs for court appointed counsel due to these cases no longer being in a offence class that requires 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 reduce costs to local government further. 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.

**Source Agencies:** 212 Office of Court Admin, 304 Comptroller of Public Accounts, 405 Department of Public Safety,  
696 Department of Criminal Justice

**LBB Staff:** JMc, DKN, MW, BH, SD, GDZ