

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 6, 2021

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

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB439 by Canales (Relating to the criminal penalties for possession or delivery of marihuana and marihuana concentrate.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB439, As Introduced : a negative impact of (\$9,542,364) through the biennium ending August 31, 2023.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill. Expanding the set of behaviors for a criminal offense is expected to result in additional demands on the correctional resources of the counties or of the State. Whether the bill would result in a significant population impact is indeterminate due to the lack of information on the number of persons who possessed or delivered marihuana concentrate.

General Revenue-Related Funds, Five- Year Impact:

<i>Fiscal Year</i>	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2022	(\$5,735,901)
2023	(\$3,806,463)
2024	(\$3,819,063)
2025	(\$3,819,063)
2026	(\$3,819,063)

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	Probable Savings/(Cost) from General Revenue Fund 1	Change in Number of State Employees from FY 2021
2022	(\$5,735,901)	34.0
2023	(\$3,806,463)	34.0
2024	(\$3,819,063)	34.0
2025	(\$3,819,063)	34.0
2026	(\$3,819,063)	34.0

Fiscal Analysis

The bill would amend the Health and Safety Code to distinguish marihuana from marihuana concentrates and require the Texas Department of Public Safety (DPS) to adopt rules for determining the amount of marihuana concentrate present in products. Existing marihuana possession and delivery offenses would be amended to include marihuana concentrate with penalties ranging from a Class B misdemeanor to a first-degree felony with punishment based on the specific circumstances of the offense.

Methodology

Under existing statute, punishments for the possession and delivery of marihuana offenses range from a Class B misdemeanor through life imprisonment but do not address marihuana concentrate. Expanding the set of behaviors for a criminal offense is expected to result in additional demands on the correctional resources of the counties or of the State due to an increase in individuals placed under supervision in the community or sentenced to terms of confinement in state correctional institutions. The bill may have a negative fiscal and population impact by increasing the number of people under felony community supervision or incarcerated within state correctional institutions. Whether the bill would result in a significant fiscal or population impact is indeterminate due to the lack of information on the number of persons who possessed or delivered marihuana concentrate. Arrest and conviction data are stored on the basis of criteria under existing statute which currently make no distinction with respect to marihuana concentrate. The number of additional individuals added to the system under the revised definition of marihuana, once the analytic tools are in place to identify and assess them, remains unknown.

DPS indicates the bill's requirement to exclude the weight of adulterants or dilutants from the weight of the marijuana concentrate will require the application of a quantitation methodology for each item tested. This process would require a more protracted analysis period that has been determined to take approximately four times the amount of time for other controlled substances testing. Additionally, no current methodology has been developed to perform this specific type of analysis. DPS expects it would take at least six months to develop this methodology.

According to DPS, a DPS Crime Lab Forensic Scientist is expected to complete analyses of 70 cases per month under normal conditions, equating to 840 cases per year. Using the quantitation method, a scientist can only reasonably complete 210 cases per year. Annual case submission increases over the last several years would suggest an average 79 percent increase each year, however, DPS' Crime Laboratory Division (CLD) assumes a 12.5 percent increase in submissions. According to DPS, if increases continue as they have in the past, the fiscal implications of the bill would be significantly higher.

The following table indicates the number of new cases that would be expected to be received and the number of additional Forensic Scientists that would be required to complete the work within the current performance measure targets.

Year	# of Cases	Additional Cases	Additional Forensic Scientists Each Year	Cumulative Total
2022	14020	1558	17	17
2023	15773	1753	19	36
2024	17745	1972	21	57
2025	19963	2218	24	81
2026	22458	2495	27	108

DPS indicates it would require 23.0 Forensic Scientist II, 3.0 Forensic Scientist IV, 3.0 Crime Laboratory Specialist III, 1.0 Quality Assurance Specialist III, and 4.0 Program Supervisor V to implement provision's of the bill. The total cost for hiring 34.0 FTEs is estimated to be \$2,758,756 in each fiscal year, which includes salary, benefits, and retirement.

Additionally, DPS indicates Crime Labs are at a full space capacity and any new FTEs would need to be housed in additional space. DPS proposes three locations (Dallas area, Austin area, and Weslaco area) to operate new labs for the purpose of this bill. The agency estimates that facility costs (including rent, security, finish out, and storage) are basic costs and actual costs may be significantly higher depending on actual case submissions. Capital equipment costs (\$1,008,000 in fiscal year 2022) and ongoing maintenance contracts (\$12,600 in each year starting in fiscal year 2024) for that equipment are also included at a rate of one liquid chromatography mass spectrometry (LCMS) instrument for every three forensic scientists. DPS estimates the need for four vehicles at a cost of \$98,560 in fiscal year 2022 – one for each of the new satellite labs and one for the Quality Assurance Specialist who will be expected to travel between the locations consistently. DPS' CLD indicates that if the bill would include adulterants and dilutants in the weight of the controlled substance, it would revert the process back to a non-qualitative methodology and the impact would be significantly reduced.

Local Government Impact

According to Travis County, no fiscal impact to the county is anticipated. The fiscal impact to other units of local government cannot be estimated at this time.

The offenses changed by the bill are Class A and Class B misdemeanors. A Class B misdemeanor is punishable by a fine of not more than \$2,000, confinement in jail for a term not to exceed 180 days, or both. A Class A misdemeanor is punishable by a fine of not more than \$4,000, confinement in jail for a term not to exceed one year, or both. Costs associated with enforcement, prosecution and confinement could likely be absorbed within existing resources. Revenue gain from fines imposed and collected is not anticipated to have a significant fiscal implication.

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

LBB Staff: JMc, DKN, LM, DGI, NA