

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 15, 2021

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

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB441 by Zwiener (Relating to the criminal and licensing consequences of certain marihuana possession and drug paraphernalia possession offenses; imposing a fee.), **Committee Report 1st House, Substituted**

Reducing the penalty for any criminal offense is expected to result in fewer demands upon the correctional resources of counties or of the State. The probable fiscal impact of implementing the provisions of the bill is indeterminate due to a lack of statewide data containing the level of detail necessary to determine the number of times in which the amount of marihuana possessed was 1 ounce or less or between 1 and 2 ounces. These data are necessary to determine the fiscal implications associated with the bill's provisions.

Under the provisions of the bill, the penalty for the possession of one ounce or less of marihuana would be reduced from a Class B to a Class C misdemeanor and the Class B misdemeanor punishment to possession of marihuana would be associated with possession of more than one ounce but not more than of two ounces. The bill would also allow the records related to the offenses of possession of one ounce or less of marihuana or possession or delivery of drug paraphernalia to be expunged under certain conditions. The bill would require a person who requests expungement related to possession of one ounce or less of marihuana or possession or delivery of drug paraphernalia to pay a fee in the amount of \$30.

Reducing the penalty 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 fiscal impact by decreasing the number of people under misdemeanor community supervision. Whether the bill would result in a significant fiscal impact is indeterminate due to the lack of data that would allow those cases in which the amount of marihuana possessed was one ounce or less to be isolated from all other cases within the penalty range which currently covers two ounces or less. The Comptroller of Public Accounts (CPA) indicates that the impact to state revenue related to fees on conviction and requests for expungement cannot be estimated at this time.

Additionally, the implementation of provisions of the the bill that would narrow the definition of drugs offenses under the Transportation Code depend on on certain steps being 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, according to the CPA.

Local Government Impact

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 C misdemeanor is punishable by a fine of not more than \$500; punishment can also include up to 180 days of deferred disposition. The fiscal implications of the bill to units of local government cannot be determined at this time.

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

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