

**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: HB1609** by Crockett (Relating to the criminal penalties for possession of marihuana.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1609, As Introduced : a positive impact of \$133,950 through the biennium ending August 31, 2023.

**General Revenue-Related Funds, Five- Year Impact:**

<i>Fiscal Year</i>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2022	(\$402,187)
2023	\$536,137
2024	\$528,488
2025	\$483,299
2026	\$438,257

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

<i>Fiscal Year</i>	<b>Probable Revenue Gain/(Loss) from General Revenue Fund 1</b>
2022	(\$402,187)
2023	\$536,137
2024	\$528,488
2025	\$483,299
2026	\$438,257

**Fiscal Analysis**

The bill would amend the Health and Safety Code to reduce the criminal penalties for certain possessions of marihuana. Under the provisions of the bill, possession of marihuana in the amount of four ounces or less would be a Class C misdemeanor, effectively eliminating Class A and Class B possessions of marihuana cases.

**Methodology**

According to the Office of Court Administration (OCA), Department of Public Safety data shows 40,878 cases for the possession of marihuana (POM) in the amount of four ounces or less that resulted in a conviction in fiscal year 2019. OCA assumes these numbers will hold steady in future years.

The criminal court costs for a Class A or B misdemeanor is \$270. Of that amount, the state receives \$147.

OCA uses a collection rate of 40 percent rate for county courts. Therefore, for fiscal year 2019, the state would have received approximately \$2,403,626 (40,878 x \$147 = 6,009,066 x 40%) from the collection of court costs in POM cases under four ounces.

The criminal court cost for Class C misdemeanors is \$76. Of that amount, the state receives \$62. The collection rate in justice and municipal courts is 65 percent. Therefore, for fiscal year 2019, the state would have received approximately \$1,647,383 (40,878 x \$62 = 2,534,436 x 65%) from the collection of court costs in POM cases under four ounces.

Given those amounts, OCA anticipates that the state would see a loss of revenue from court costs of \$756,243 per year.

Reducing the penalties for a 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 individuals placed under community supervision or sentenced to a term of confinement within state correctional institutions. From fiscal years 2018 through 2020, an annual average of 9,981 people were placed onto misdemeanor community supervision, an annual average of 20 were placed onto felony community supervision, and an annual average of fewer than 10 were admitted into correctional facilities for the possession or enhancement offenses specified by the bill's provisions. Under the provisions of the bill, these individuals would no longer be placed under community supervision or admitted to correctional facilities. Community supervision and corrections departments are funded \$0.70 per misdemeanor placement for 182 days, felony community supervision costs average \$2.13 per placement with an average placement length of 1,056 days, and state jail costs average \$65.52 per person with an average length of stay of 170 days. The savings include a time lag from the commission of the offense to placement or admission and are calculated by multiplying the adjusted placements or admissions based on the projections published in the *January 2021 Adult and Juvenile Correctional Population Projections* report by the duration and the per diem cost. 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.

FY	Probable Revenue Gain/(Loss) from General Revenue Fund 1
2022	\$354,056.48
2023	\$1,292,380.37
2024	\$1,284,731.00
2025	\$1,239,542.17
2026	\$1,194,499.60

This analysis assumes the provisions of the bill addressing felony sanctions for criminal offenses would not result in a significant impact on state correctional agencies.

### Local Government Impact

OCA anticipates a revenue loss to local governments of approximately \$2,011,198 from the reduction of Class A and B misdemeanor cases and a gain in revenue of approximately \$371,990 from Class C misdemeanor cases. OCA also estimates that local governments may realize a savings from the reduction of attorney fees of \$4,503,202 due to these cases no longer being in a offense 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 marijuana, will reduce costs to local government further. Counties may see a decrease in revenue from fines, as the maximum fine for a Class C misdemeanor is \$500, whereas the maximum fines for Class A and B misdemeanors are \$4,000 and \$2,000, respectively.

**Source Agencies:** 212 Office of Court Admin, 696 Department of Criminal Justice

**LBB Staff:** JMc, DKN, CMA, ANE