

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 3, 2021

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

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB3772 by White (Relating to the criminal consequences of certain criminal offenses involving the possession of marihuana or possession of drug paraphernalia; imposing a fee; authorizing a fine.),
Committee Report 1st House, Substituted

The fiscal implications of the bill cannot be determined at this time as the impact on fees, penalties, and court costs associated with modifying and expanding the definition of marihuana are unknown. Additionally, the impact to the state revenue cannot be estimated as data does not isolate conviction for possession of less than one ounce of marihuana.

The bill would amend the definition of “marihuana” and provide exclusions related to certain Penalty Group 2 offenses. The bill would reduce the criminal penalty for possession of one ounce or less of marihuana. The bill would amend the Code of Criminal Procedure as it relates to the expunction of certain records and fines for certain convictions. The bill would require a person who requests expungement to pay a \$30 fee. Additionally, the bill would require courts to impose a fine of \$100 upon conviction for certain drug and controlled substance violations.

The Comptroller of Public Accounts indicates that although the bill would reduce the criminal penalty for possession of one ounce or less of marihuana, data provided by the Department of Public Safety (DPS) does not isolate convictions for possession of less than one ounce of marihuana. Therefore, the impact to state revenue cannot be estimated.

DPS indicates costs associated with the bill's provisions could be absorbed using existing resources, however, current tests are unable to determine whether the marijuana derives from a plant that meets the definition of marihuana, a plant that meets the definition of hemp, a lab-created chemical process, or other source. This could be a significant prosecutorial issue that DPS cannot address and may indeed vary by prosecutors' offices and the facts of each individual case.

The Office of Court Administration anticipates that the bill would have a fiscal impact due to a change in court costs and fines assessed, but does not have the information to calculate it. However, no significant fiscal impact to the state court system is anticipated.

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend various codes as they relate to the criminal consequences of certain criminal offenses involving the possession of marihuana or possession of drug paraphernalia. Under the provisions of the bill, the definition of marihuana would be modified, possession of one ounce or less would now be punishable as a Class C Misdemeanor, and possession of more than one ounce but two ounces or less would be a Class B Misdemeanor.

A Class B misdemeanor is punishable by confinement in county jail for a term not to exceed 180 days and in addition to confinement, an optional fine not to exceed \$2,000. A Class C misdemeanor is punishable by a fine not to exceed \$500 (up to 180 days of deferred disposition and no confinement).

Reducing the punishment for any offense is expected to result in fewer demands on the correctional resources of the counties or of the State due to fewer individuals placed under supervision in the community. Whether the

bill would result in a significant population impact is indeterminate due to the lack of information on the actual weight or amount of marihuana possessed. This information is necessary to identify the cases affected by the provisions of the bill from all other marihuana possession cases under the provisions of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

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, KFB, NA