

Fiscal Estimate - 2013 Session

Original Updated Corrected Supplemental

LRB Number 13-3671/1		Introduction Number AB-0810	
Description Marijuana possession, regulation of marijuana distribution, operating a motor vehicle while under the influence of marijuana, making an appropriation, requiring the exercise of rule-making authority, and providing penalties			
Fiscal Effect			
State:			
<input type="checkbox"/> No State Fiscal Effect <input checked="" type="checkbox"/> Indeterminate			
<input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations		<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/> Decrease Costs	
Local:			
<input type="checkbox"/> No Local Government Costs <input checked="" type="checkbox"/> Indeterminate			
1. <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory 2. <input checked="" type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory		3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input checked="" type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts			
Fund Sources Affected		Affected Ch. 20 Appropriations	
<input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS 20.550(1)(b-d)			
Agency/Prepared By		Authorized Signature	
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		Date	
		3/3/2014	

Fiscal Estimate Narratives

SPD 3/3/2014

LRB Number	13-3671/1	Introduction Number	AB-0810	Estimate Type	Original
Description Marijuana possession, regulation of marijuana distribution, operating a motor vehicle while under the influence of marijuana, making an appropriation, requiring the exercise of rule-making authority, and providing penalties					

Assumptions Used in Arriving at Fiscal Estimate

The State Public Defender (SPD) is statutorily authorized and required to appoint attorneys to represent indigent defendants in criminal and certain commitment proceedings. The SPD plays a major role in ensuring that the Wisconsin justice system complies with the right to counsel provided by both the state and federal constitutions. Any legislation has the potential to increase SPD costs if it creates a new criminal offense, expands the definition of an existing criminal offense, or increases the penalties for an existing offense.

This bill changes state law to permit an ounce of marijuana, 8 ounces of marijuana-infused product in solid form, or 36 ounces of marijuana-infused product in liquid form and so that state law permits a nonresident of Wisconsin who is over the age of 21 to possess no more than a quarter ounce of marijuana, 4 ounces of marijuana-infused product in solid form, or 18 ounces of marijuana-infused product in liquid form. This bill also eliminates the prohibition on possessing or using drug paraphernalia that relates to marijuana consumption. A person who possesses more than the maximum amount but not more than 20 grams of marijuana is subject to a civil forfeiture not to exceed \$1,000 or imprisonment not to exceed 90 days or both and a person who possesses more than 20 grams of marijuana is guilty of a class I felony. In addition, under the bill, the cultivation of marijuana is a Class I felony and the use of marijuana in public is subject to a civil forfeiture of not more than \$100. This bill also creates a process by which a person may obtain a permit to sell marijuana. Under this bill, a person who does not have a permit to sell marijuana may not sell, distribute or transfer marijuana, or possess marijuana with the intent to sell or distribute it. A person who violates the prohibition is guilty of a Class I felony except that the felony classification increases to a Class H felony if the person sells, distributes or transfers marijuana to a person who is under the age of 21 (minor) and the person is at least three years older than the minor. This bill prohibits a permittee from selling, distributing or transferring marijuana to a minor and from permitting a minor to be on premises for which a permit is issued. If a permittee violates one of those prohibitions, the permittee may be subject to a civil forfeiture of not more than \$500 and the permit may be suspended for up to 30 days. Under this bill, a minor who does any of the following is subject to a forfeiture of not less than \$250 nor more than \$500: procures or attempts to procure marijuana from a permittee; falsely represents his or her age to receive marijuana from a permittee; knowingly possesses marijuana; or knowingly enters any premises for which a permit has been issued. This bill changes state law regarding marijuana. It does not affect federal law, which generally prohibits persons from manufacturing, delivering, or possessing marijuana and applies to both intrastate and interstate violations.

Since the bill adds new penalties, it is possible the SPD will see an increase in the number of cases in which it provides representation; however, these may be offset by the potential decrease in cases due to decriminalization of marijuana possession. According to CCAP, there were 1,964 distinct cases that were criminally charged as felonies in FY2013 but would not be if the provisions of this bill are made into law. If all of these cases were represented by the SPD, this would equate to a cost savings of \$1,092,396; however, it is highly unlikely that all of these cases were represented by the SPD. We are unable, however, to quantify the number of cases that might occur due to the provisions in the bill. The SPD's average cost to provide representation with a private bar attorney in a felony case was \$556.21 and \$247.54 in a misdemeanor case in fiscal year 2013. Because of the annual caseloads for staff attorney positions specified for budgeting purposes under § 977.08(5), Stats., it would be more cost effective to add staff attorney positions if a significant number of SPD cases resulted from this provision of the bill.

Because probation or prison could be ordered upon conviction for the proposed crimes, this change could indirectly lead to additional cases in which the Department of Corrections (DOC) would seek to revoke probation or extended supervision. The SPD provides representation in proceedings commenced by the Department of Corrections (DOC) to revoke supervision. Thus, the bill could indirectly increase the number of cases in which the SPD appoints attorneys in revocation proceedings. The average cost during fiscal year

2013 for SPD representation by a private bar attorney in a revocation proceeding was \$303.86.

This bill could also have a fiscal impact on counties. There are some defendants who, despite exceeding the SPD's statutory financial guidelines, are constitutionally eligible for appointment of counsel because it would be a substantial hardship for them to retain an attorney. The court is required to appoint counsel at county expense for these defendants. The counties could also incur additional costs associated with incarceration of defendants, both pending trial and after sentencing.

Long-Range Fiscal Implications