

Fiscal Estimate Narratives
DOC 4/1/2014

LRB Number	13-1603/2	Introduction Number	AB-0891	Estimate Type	Original
Description Possession of tetrahydrocannabinols, and providing a penalty					

Assumptions Used in Arriving at Fiscal Estimate

According to Wisconsin State law, a person may not possess marijuana or any other substance containing tetrahydrocannabinol (THC).

Under current law, a person who is found in possession of the substances listed above, is guilty of a misdemeanor and may be fined not more than \$1,000, imprisoned for not more than six months, or both. A person who commits a second or subsequent violation is guilty of a Class I felony and may be fined up to \$10,000, imprisoned for up to three years and six months, or both.

Counties and municipalities can enact ordinances prohibiting the possession of 25 grams or less of marijuana. Violations can result in a civil offense punishable by forfeiture.

Under this bill, the penalties for possession violations are significantly reduced. The first offense of possession of THC commits a civil offense, punishable by forfeiture of not less than \$150 nor more than \$300. A second offense of possession of THC is guilty of a Class C misdemeanor and may be fined up to \$500, imprisoned for up to 30 days, or both. A person who commits a third offense is guilty of a Class A misdemeanor, and may be fined up to \$10,000, imprisoned for up to nine months, or both. A person who commits a fourth or subsequent possession of THC offense, or who has been convicted of a prior crime related to any controlled substance except possession of THC, is guilty of a Class I felony and may be fined up to \$10,000, imprisoned for up to three years and six months, or both.

In addition, the bill provides that a juvenile who is found to have committed a first violation of possession of THC is subject to the dispositions specified in the Juvenile Justice Code for a juvenile who violates a civil law rather than to the delinquency dispositions specified in the Juvenile Justice Code for a juvenile who violates a criminal law.

Under this bill, counties and municipalities can enact ordinances prohibiting the possession of any amount of marijuana. Violations can result in a civil offense punishable by forfeiture.

As of 12/30/13 the Department of Corrections (DOC) had 1,100 adult inmates with a THC related offense in its correctional institutions. However, the DOC cannot identify all inmates who were incarcerated specifically for possession or propagation of marijuana. There are many offenders whose convictions are for violating statutes that only specify the possession or propagation of "controlled substances," and therefore the Department cannot know which of these involved marijuana or THC and which involved other drugs.

Also, the DOC has some offenders that are convicted of violating statutes that specify marijuana as the drug involved; however, looking at only these offenders would not be a complete picture of the number of inmates who were convicted of offenses involving marijuana. Currently, as of 03/28/2014, the DOC has three juveniles with a THC related offense in its juvenile correctional institutions (JCI), however all three had additional offenses as well. One offense is for possession with intent to deliver, and two are for possession of THC.

Since this bill would effectively decrease the sentence length for any future adult offenders convicted of possession, the DOC would likely see a decrease in the population convicted of these crimes. However, since the DOC is currently not able to estimate the number of adults who would be convicted of these crimes, it is not possible to determine the actual cost reduction for the institutions.

This bill's juvenile THC possession revisions would most likely not have a fiscal impact on DOC since the three juveniles with THC possession violations were adjudicated with additional offenses. In addition, the true impact of the proposed legislation would be the second possession offense would now be considered the first, and would be subject to the \$50 maximum forfeiture.

The average FY13 annual cost for an inmate in a DOC institution is approximately \$32,100. However, when there is excess capacity in DOC facilities, the incremental costs (i.e. food, health care and clothing) of housing a small number of inmates is approximately \$5,400 based on FY13 costs. Should the Department use contract beds, the rate would be approximately \$18,800 annually per person.

By reducing the penalties, it is possible the Department may see an increase or decrease in the number of individuals placed on probation. There is no way to know what sentencing practices judges would follow as a result of this law change. State costs could change if an increased or decreased number of offenders are convicted of this crime and placed on probation. The average FY13 annual cost to supervise one offender is approximately \$2,700.

Counties and municipalities could see a variety of effects from this bill. Counties and municipalities that enact ordinances on possession of any amount of marijuana could see increased revenues from civil forfeitures related to that crime. However, since many of the jail sentences for possession would be under a year, county jails could possibly see an increase in their jail populations. County jails could experience increased or decreased costs, as offenders may be sentenced to jail as a condition of probation.

Long-Range Fiscal Implications