

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 6324

BILL NUMBER: HB 1410

NOTE PREPARED: Dec 15, 2023

BILL AMENDED:

SUBJECT: Legalization of Cannabis.

FIRST AUTHOR: Rep. Payne

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: *Sales and Use of Cannabis:* This bill legalizes the sale and use of cannabis by a person at least 18 years of age.

Medical Cannabis Program: It requires the Indiana Department of Health (IDOH) to establish a program to issue a medical cannabis identification card to a patient whose physician has recommended cannabis to treat a medical condition. It also permits the sale of cannabis to a person less than 18 years of age if the person has been issued a medical cannabis identification card, and exempts purchases by a medical cannabis cardholder from sales tax.

The bill makes conforming amendments.

Effective Date: July 1, 2024.

Explanation of State Expenditures: *Summary* - The IDOH may have a one-time charge of about \$1.2 M to establish a medical cannabis identification card program and complete the related ongoing workload. The bill will have an indeterminate impact on the number of commitments to the Department of Correction (DOC) for felony violations by removing marijuana, hash oil, salvia, and hashish from the definitions of certain marijuana crimes, and changing the impairment standards for operating while intoxicated (OWI) offenses.

Additional Information - Marijuana is federally classified as a Schedule I controlled drug with no medically indicated uses. Although 14 states have comprehensive medical marijuana programs and 24 states have combined adult and medical use regulatory programs, future federal responses to state initiatives is unknown.

Penalty Provisions: The overall impact of the changes in the bill on the number of offenders committed to DOC facilities is potentially minor as the number of offenders committed to DOC facilities for marijuana dealing and possession each year is relatively small.

This bill removes marijuana, hash oil, salvia, and hashish from dealing, possessing, and paraphernalia offenses for which the criminal penalties are Class A or Class B misdemeanors, Class A infractions, or Level 6 felony. The bill could result in a minor reduction in the DOC offender population with 26 offenders a year on average committed to a DOC facility between FY 2019 and FY 2023. There were no commitments to DOC for possession of paraphernalia since FY 2018.

**Commitments to DOC by Fiscal Year for
Marijuana Offenses**

	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>
Possession	20	2	1	0	4
Dealing	<u>25</u>	<u>19</u>	<u>15</u>	<u>17</u>	<u>25</u>
	45	21	16	17	29

There are few OWI felony cases in which persons have been convicted and sentenced for OWI causing either serious bodily injury or death in which a controlled substance or a metabolite has been found in the person’s blood. There were a total of 17 offenders committed to the DOC for a Schedule I or II controlled substance in blood between FY 2019 and FY 2023. [The record does not indicate which among the 250 Schedule I and II controlled substances were found in the blood.]

The following table shows the sentencing ranges for Level 5 and 6 felonies.

	<u>Minimum</u>	<u>Advisory</u>	<u>Maximum</u>
Level 5	1 years	3 years	6 years
Level 6	6 months	1 year	30 months

The average expenditure to house an adult offender was \$28,110 annually, or \$76.96 daily, in FY 2023. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$4,456 annually, or \$12.21 daily, per prisoner. The marginal cost estimates are based on contractual agreements with food and medical vendors and projections based on prior years for clothing and hygiene.

Sales Tax Collections: The DOR will experience additional costs and workload to implement the provisions outlined in the bill. The additional funds and resources required could be supplied through existing staff and resources currently being used in another program or with new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions.

Indiana Department of Health (IDOH): The IDOH will have increased workload and cost to develop rules and issue photo identification cards. As an example, the Bureau of Motor Vehicles had a one-time expenditure of \$1.2 M to issue a new type of license with photo.

Explanation of State Revenues: Summary - Revenue to the state General Fund could increase by between \$23.6 M and \$43 M per year, including the potential loss of court fees. Other state funds could have an overall decrease of \$9.5 M per year, primarily due to the reduction in monetary penalties from marijuana conviction.

Retail Sales Taxes: Significant revenue from Sales Tax on cannabis could potentially be collected beginning in FY 2025. The 7% state Sales Tax would apply to sales of cannabis, with an exemption for cannabis purchased by a medical cannabis cardholder. The Sales Tax revenue increase could be approximately \$23.9 M to \$43.1 M in the first full year of sales. The estimated potential sales revenue is based on retail sales of cannabis and revenue collections in states that have implemented programs permitting and taxing both medical cannabis and adult-use cannabis, adjusted for marijuana use percentage and population in each state and estimated cross-border sales. Sales Tax revenue is deposited in the state General Fund (99.838%), Commuter Rail Service Fund (0.131%), and Industrial Rail Service Fund (0.031%).

Penalty Provisions: The potential state General Fund revenue loss from court fees due to the decriminalization of certain marijuana offenses is estimate to be \$332,000 and for the State User Fee Fund is \$64,480. The estimated loss is based on 2023 data of 358 felony convictions and 2,854 misdemeanor convictions for marijuana possession or dealing. The impact on OWI convictions due to changes in metabolite levels was not included in the estimate.

State General Fund Revenue Loss Estimates

	<u>Trial Courts</u>	<u>City and Town Courts</u>	<u>Totals</u>
Court Fees	\$61,404	\$162,822	\$224,226
Other Fees	\$24,854	\$83,878	\$108,732
Totals	\$86,258	\$246,700	\$332,958

If fewer persons are found guilty of felonies and misdemeanors, revenue to the Common School Fund from fines will be reduced by a maximum of \$9.5 M. The table below shows the maximum potential loss based on average convictions from FY 2019 to FY 2023 and assuming the maximum monetary penalty was given in every case. The impact on OWI convictions due to changes in metabolite levels was not included in the estimate.

Maximum Revenue Loss from Marijuana Offense Convictions

Criminal Penalty	Average Annual Convictions	Maximum Monetary Penalty	Total
Felony	369	\$10,000	\$ 3.7 M
Class A Misdemeanor	659	5,000	3.3 M
Class B Misdemeanor	2,475	1,000	2.5 M
Total	3,503	---	\$9.5 M

Controlled Substance Excise Tax (CSET) Repeal: The tax is collected on the delivery, possession, or

manufacture of controlled substances in violation of state or federal law. CSET collections were \$3,555 per year on average between FY 2019 and FY 2023. Revenue is deposited in the Controlled Substance Tax Fund.

Explanation of Local Expenditures: *Penalty Provisions:* These provisions would likely reduce the costs to counties for public defense expenses and the pre and post trial jail confinement for persons who are charged with possessing or dealing marijuana as either misdemeanors or felonies. The bill would also reduce the supervisory burden on community corrections agencies and probation departments.

For persons who were sentenced for marijuana possession as a Level 6 felony, about 85% were confined in a county jail pretrial. In addition, 48% of these persons were confined in a county jail after trial for an average of 121 days, and 86% were supervised by a community corrections agency, a probation department, or both. No similar information was available about persons convicted and sentenced for marijuana dealing or possession as a misdemeanor.

Metabolite: Persons who are charged with OWI with at least 5 nanograms of THC will commit a Class C misdemeanor for an OWI. The number of persons who would exceed this threshold are unknown and cannot be estimated.

Marijuana Eradication Program: The bill eliminates the Marijuana Eradication Program, which is operated by county weed control boards to eliminate and destroy wild marijuana plants. In FY 2022, Decatur, Fountain, Jasper, Newton, and Pike counties reported marijuana eradication funds, with only Decatur County reporting expenditures of \$3,684.

Explanation of Local Revenues: *Penalty Provisions:* Revenue loss from removing marijuana, hash oil, and hashish from the list of illegal drugs is estimated to be \$141,000.

Revenue Loss from Certain Legalization

Courts	Trial	City and Town Courts	Totals
Court Fees	\$88,812	\$20,844	\$109,656
Other Fees	<u>\$27,137</u>	<u>\$4,246</u>	<u>\$31,383</u>
Totals	\$115,949	\$25,090	\$141,039

Marijuana Eradication Local User Fees: The bill eliminates the Marijuana Eradication fee, an optional fee that may be imposed by the court. The fee is deposited in the County Court User Fee Fund and transferred by the county fiscal body to the Marijuana Eradication Fund. Five counties reported balanced with their Marijuana Eradication Fund in FY 2022, with revenues to the funds ranging from \$0 to \$26,808.

State Agencies Affected: Department of Correction; Department of Health; Department of Revenue.

Local Agencies Affected: Counties; Trial courts; local law enforcement agencies.

Information Sources: Indiana Sheriffs’ Association; Indiana Supreme Court Abstracts of Judgment; Department of Correction; U.S. Department of Justice Marshals Service.

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