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FISCAL IMPACT STATEMENT

LS 6786

BILL NUMBER: HB 1547

NOTE PREPARED: Dec 23, 2020

BILL AMENDED:

SUBJECT: Medical Cannabis.

FIRST AUTHOR: Rep. Payne

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: *Medical Cannabis Program:* The bill establishes a Medical Cannabis Program, administered by the Indiana State Department of Health (ISDH), to permit the use of medical cannabis in Indiana.

Penalty Provisions: It reduces the penalty for possession of marijuana, hashish, hash oil, and salvia to:

- (1) a Class C infraction for a first offense;
- (2) a Class C misdemeanor for a second or subsequent offense; and
- (3) a Class A misdemeanor for a second or subsequent offense if the person possesses more than a specified amount.

It also reduces the penalty for possession of marijuana, hashish, hash oil, or salvia packaged in a container labeled as containing low THC hemp extract to a Class C misdemeanor.

Probation: The bill provides that a person's probation may not be revoked solely on the basis that the person tested positive for marijuana or a metabolite of marijuana.

It makes conforming amendments.

Effective Date: July 1, 2021.

Summary of NET State Impact: The cost to the ISDH and Indiana State Police (ISP) of issuing and enforcing a medical cannabis program is estimated between \$4.5 M and \$5.9 M.

Fee revenue from applications, permits, and renewals may provide an offset to the costs depending on the rates set by the ISDH. An estimated \$2.2 M could be collected from Sales Tax on medical marijuana annually. Also, the bill establishes four new offenses with varying penalties. It indicates that several crimes do not apply to people in the medical cannabis program. These changes will have a minor effect on incarceration and revenue from judgments, fines, and court fees. It also provides privileges and immunities for patients, caregivers, physicians, and cultivators and their workers that may mitigate arrests, prosecutions, and administrative proceedings.

Ultimately, the total impact to the state will depend upon the rules that the ISDH adopts and the provisions of the program established in the bill.

Explanation of State Expenditures: *Indiana State Department of Health (ISDH):* The ISDH is to adopt rules and issue several types of identification and permits connected to the cultivation, dispensing, and use of medical cannabis, as well as regulate the permits. Some of the costs may be offset with revenue from permit fees. Based on recent appropriations in other states for somewhat similar programs, the total program may cost between \$2 M and \$3 M for first year operations and between \$1.3 M and \$1.7 M for start-up costs, depending on the number of licenses issued, the procedures developed, and the amount of oversight needed.

Cannabis Advisory Board: The 16-member Cannabis Advisory Board will meet at the call of the chair to examine debilitating conditions that may benefit from the use of medical cannabis and will issue an annual report to the General Assembly. [Members are entitled to traveling and direct expense reimbursement, but not salary per diem.]

Indiana State Police: The ISP will have enforcement responsibilities that may cost as much as \$1.2 M. The ISP will review security plans for the 13 cultivation centers and, along with the ISDH, be allowed to inspect the 40 dispensing organizations. A national criminal history background check may result in a minor increase in workload to the state police to process additional criminal history checks.

Bureau of Motor Vehicles (BMV): The status of a person as a patient or a caregiver is to be noted on the driving record and removed when the person no longer holds a valid registry card. BMV and the INSPECT program will receive information from the ISDH concerning people who are registered as patients or caregivers, which is to be noted in their databases.

Possession of Marijuana, Hashish, Hash Oil, and Salvia Would Result in a Reduction in Annual Offender Commitments: Changing possession of marijuana from a Level 6 felony to a Class A misdemeanor for certain offenses would likely have a minor reduction in DOC offenders. The three-year average number of persons who are convicted and sentenced for a Level 6 felony was 385 persons. Of these, about 20 persons (or 5%) were sentenced to DOC facilities for 1.2 years.

Cannabis is federally classified as a Schedule I controlled drug with no medically indicated uses. Although 33 states have medical marijuana programs, future federal responses to state initiatives are unknown.

Additional Information - Several states have enacted medical marijuana programs in the last several years with some program features similar to the bill. These states have appropriations for operating costs ranging from \$900,000 to \$4 M. Illinois has appropriated \$5.0 M for its medical cannabis program and budgeted \$1.2 M for the Illinois State Police for direct and indirect costs to that agency.

Identification Cards and Permits: The bill requires the ISDH to adopt rules and provide for the issuance of

identification cards for registered patients and caregivers, and for the employees of cultivation centers and dispensing organizations. Thirteen cultivation center and 40 dispensing organization permits are to be issued unless there is an insufficient number of qualified applicants. All registrations and permits must be renewed annually and patients must inform the ISDH when there is a change in caregiver.

Rules: Requirements for the rules adopted by the ISDH are specified in the bill. The bill includes regulatory requirements for the identification card and permit holders that will increase workload and costs for the ISDH's medical cannabis program, such as sending notices of registration or permit expiration, seeking injunctive relief against a cultivating center upon complaint of a local health officer, and receiving petitions from Indiana residents for added qualifying conditions. In Ohio, the rule-setting process is expected to take two years. The bill allows the ISDH to adopt emergency rules to expedite approval for terminally ill patients.

Start-up Costs: One-time start-up costs to purchase equipment for the issuance of identification cards and to provide office equipment and computer access are indeterminate. Maryland had an appropriation of \$125,000 to begin its program, while North Dakota incurred about \$95,000 for one-time start-up costs. Hawaii's published startup costs were \$415,000 for patient and caregiver registries only. Dispensary licensing in Hawaii became effective in January 2015.

Programs with more oversight have higher costs. For example, Maryland anticipates needing \$3 M to \$4 M to oversee the quality and quantity of production, and Rhode Island added plant tags to monitor cultivation for estimated cost of \$1.2 M. Additionally, costs for databases to track transactions from seed to sales are about \$1.7 M in Massachusetts, and Ohio reports spending \$1.4 M on information technology services.

Explanation of State Revenues: *Fees:* The ISDH will set the fee for registrations and permits and the fee revenue will be deposited in the Medical Cannabis Fund. The nonreverting Medical Cannabis Fund defrays the ISDH's administration and enforcement costs. All fees are to be waived for terminally ill individuals. Additionally, among the penalties for violation of regulations by cultivation centers and dispensing organizations is a civil penalty of up to \$50,000 and \$10,000, respectively. [Civil penalties are deposited in the state General Fund.]

Sales Tax: Additional Sales Tax revenue could be collected on the sale of medical marijuana allowed by the bill. The additional revenue could be approximately \$2.2 M annually when the state's medical marijuana program is fully implemented. Collections from sales of seeds is indeterminate. 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 bill adds the following criminal penalties. These combined penalty provisions may have an indeterminate impact on revenues from fines and court fees, impacting the Common School Fund and the state General Fund.

- Failure of a patient or caregiver to notify the ISDH of a change in information, a Class C infraction.
- Violation of a patient or caregiver regulation, a Class C misdemeanor.
- Misrepresentation of a medical condition, a Class B misdemeanor.
- Release of confidential information, a Class B misdemeanor.

Background Checks: The Indiana State Police collect fees totaling \$51.20 to process FBI-compliant criminal history checks, of which \$15 is deposited in the General Fund.

Additional Information - Sales Tax: The estimated revenue from Sales Tax on medical marijuana is based

on sales and tax revenue in states that have implemented medical marijuana programs. LSA used data from Illinois (prior to legalization of adult use marijuana), Ohio, and Pennsylvania and made adjustments based on population to estimate potential sales of medical marijuana in Indiana. Illinois imposes a 7% tax on medical marijuana and collected \$1.91 M in FY 2017, \$3.89 M in FY 2018, and \$5.88 M in FY 2019. Approximately \$58.3 M of medical marijuana was sold in Ohio during the first year of Ohio’s program. Pennsylvania’s 5% medical marijuana tax yielded \$3.52 M in FY 2019 and \$10.72 M in FY 2020. Based on these data and adjusted for population, it is estimated that around \$31.7 M of medical marijuana could potentially be sold in Indiana in the first few years that the program is in operation.

Explanation of Local Expenditures: *Penalty Provisions:* The bill will have indeterminate impact on the number of offenders incarcerated or detained in a county jail. The average cost per day is approximately \$54 based on the per diem payments reported by U.S. Marshals to house federal prisoners in 16 county jails across Indiana during federal FY 2017.

Possession of Marijuana, Hashish, Hash Oil, and Salvia: The following table summarizes the changes in the offense of marijuana possession that this bill proposes.

Condition of Possession of Marijuana, Hash Oil, Hashish or Salvia	Current Offense	Proposed Offense	Effect on Local Units of Government
Intentional Possession	Class B Misdemeanor	Class C Infraction	Reduction in persons on probation. The maximum sentence is 60 days.
Possession with a Conviction for a Prior Offense for a Drug Offense	Class A Misdemeanor	Class C Misdemeanor	Costs to the local governments could decrease since the maximum term of imprisonment for a Class A misdemeanor is up to one year while the maximum term for a Class C misdemeanor is up to 60 days.
Prior Conviction for a Drug Offense and the Person Possesses More than 30 Grams of Marijuana or at least 5 Grams of Hash Oil, Hashish or Salvia	Level 6 Felony	Class A Misdemeanor	Minimal effect on county jails and probation departments. 64% of all persons who have been convicted and sentenced between FY 2013 and 2019 for Level 6 felony possession were placed on probation.

Revocation of Probation: This provision would have a minor effect on probation cases. Under current practice, probation departments generally do not revoke probation for either a first offense when the sole reason for probation violation is a blood test that shows the presence of marijuana or its metabolite. OFMA received responses from the chief probation officers in 28 counties that represent 25% of all pending cases in probation. Of these counties, 25 chief probation officers indicated that the court does not revoke probation for this sole reason unless the person has a prior history of failed drug tests. If a person fails a drug screen in this circumstance, the person will receive increased sanctions, placed in community corrections or placed in the county jail. Few of these persons are committed to DOC.

Explanation of Local Revenues: *Penalty Provisions:* If additional court actions occur and guilty verdicts are entered, local governments would receive more revenue from court fees. However, any change in revenue

would likely be minimal.

State Agencies Affected: Governor (for appointment to advisory committee), ISDH, ISP, BMV, Department of Revenue, Professional Licensing Agency (for INSPECT).

Local Agencies Affected: Trial courts with criminal jurisdiction; prosecuting attorneys, sheriffs.

Information Sources: Indiana Sheriffs' Association; Department of Correction; Illinois Department of Revenue, Monthly Collections Remitted to the State Comptroller, <https://www2.illinois.gov/rev/research/taxstats/CollectionsComptroller/Pages/default.aspx>. Ohio Department of Commerce, Medical Marijuana Control Program, Historical Sales Data, <https://medicalmarijuana.ohio.gov/documents/ProgramUpdate/Historical%20Sales%20Data.pdf>. Pennsylvania Department of Revenue, Revenue and Receipts Reports, <https://www.revenue.pa.gov/GeneralTaxInformation/News%20and%20Statistics/ReportsStats/RevenueReceipts/Pages/default.aspx>. Census Bureau, American Community Survey, Five Year Population Estimates.; Abstracts of Judgment, Indiana Supreme Court; Bureau of Motor Vehicles; various state program websites and contacts available from LSA upon request; Bureau of Motor Vehicles; OFMA survey of chief adult probation officers; DOC Offender Information System.

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