

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 873 – SB 1211

March 29, 2015

SUMMARY OF ORIGINAL BILL: Repeals a Class A misdemeanor for knowingly possessing or casually exchanging Schedule VI controlled substances (marijuana and tetrahydrocannabinols) except for non-leafy, resinous tetrahydrocannabinol (hashish).

Repeals a Class E felony for distributing marijuana less than one-half ounce to a minor.

Repeals a Class A misdemeanor for distributing marijuana less than one-half ounce.

Creates a Class C misdemeanor punishable by \$100 fine only for possessing, casually exchanging, or distributing a Schedule VI controlled substance (marijuana and tetrahydrocannabinols) other than a non-leafy, resinous tetrahydrocannabinol (hashish).

Increases from one-half ounce to one ounce the amount of marijuana that someone can manufacture, deliver, sell, or possess.

Increases from two to three the number of prior convictions under Tenn. Code Ann. § 39-17-418 one must have to be prosecuted for a Class E felony.

Requires anyone convicted of possessing, casually exchanging, or distributing a controlled substance or a Schedule VI controlled substance over one ounce to attend a drug offender school for which the offender shall pay the fee.

CORRECTED FISCAL IMPACT OF ORIGINAL BILL:

Decrease State Expenditures – \$1,765,600/Incarceration*

SUMMARY OF AMENDMENT (005187): Deletes all language after the enacting clause.

Increases the amount of marijuana that one can possess or casually exchange from one-half ounce to one ounce. Simple possession and casual exchange of marijuana of one ounce or less is still a Class A misdemeanor.

Repeals Class E felony of third or subsequent violations for simple possession or casual exchange of marijuana under one ounce. Punished as a Class A misdemeanor, but by fine only. Requires community service at a drug or alcohol rehabilitation or treatment center for each person convicted of a third or subsequent violation.

HB 873 – SB 1211

Increases from one-half ounce to one ounce the minimum amount of marijuana for which someone can be prosecuted for manufacturing, delivering, selling, or possessing with intent.

Authorizes a jury to infer that someone possessing or casually exchanging marijuana in an amount less than one ounce was not possessing or exchanging for the purpose of selling or distributing and is punishable under Tenn. Code Ann. § 39-17-418(d).

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Decrease State Expenditures – \$1,259,200/Incarceration*

Assumptions for the bill as amended:

- Under current law, a third or subsequent offense for possession of marijuana under one-half ounce is punished as a Class E felony. The bill would increase this offense to fourth and subsequent offenses.
- Statistics from the Department of Correction (DOC) show a 10-year average of 62 admissions per year for a third or subsequent possession violation. It is assumed that one-third (33.33%) are marijuana-related offenses.
- The bill will result in 21 admissions (62 x 0.3333) being charged as Class A misdemeanors punishable by fine under the bill rather than Class E felonies under current law.
- Data from the DOC shows the average time served for third or subsequent possession violations is 1.05 years (383.51 days).
- According to the DOC, the average operating cost per offender per day for calendar year 2015 is \$66.03.
- The bill will decrease state incarceration costs by \$531,787 (21 admissions x 383.51 days x \$66.03).
- The bill will also decrease admissions for manufacturing, delivering, selling, or possessing with intent to sell marijuana between one-half ounce and one ounce.
- Under current law, one commits a Class E felony for possessing with intent to sell marijuana in an amount between one-half ounce and 10 pounds. The bill would allow possession with intent of marijuana in an amount between one-half ounce and one ounce. The bill will result in fewer Class E felony admissions for possession with intent for amounts of marijuana between one-half ounce and one ounce.
- Statistics from the DOC show a 10-year average of 263.1 admissions per year for manufacturing, delivering, selling, or possessing with intent to sell marijuana between one-half ounce and one ounce.
- It is assumed that most offenders actually being imprisoned for possession with intent to sell or selling marijuana possessed a substantial amount of marijuana, which likely exceeded one ounce. It is assumed that the bill will reduce these admissions by 10 percent (263.1 admissions x 0.1 = 26 admissions).
- Data from the DOC shows the average time served for manufacturing, delivering, selling, or possessing with intent to sell marijuana between one-half ounce and ten pounds is 1.16 years (423.69 days).

- The bill will decrease state incarceration costs by \$727,383 (26 admissions x 423.69 days x \$66.03).
- Statistics from the DOC show an average of 0.9 admissions each year for casually exchanging a controlled substance with a minor. It is assumed that most of the admissions are related to Tenn. Code Ann. § 39-17-418(a) [casually exchange of a controlled substance] and not Tenn. Code Ann. § 39-17-418(b) [marijuana under one-half ounce]. Repealing the offense of distributing less than one-half ounce of marijuana to a minor will not significantly decrease state expenditures.
- The total decrease in state incarceration costs is \$1,259,170 (\$531,787 + \$727,383).
- The bill will result in 47 fewer felony cases each year. This equates to 1.5 cases per judicial districts. The bill will not reduce the courts, district attorneys, or public defenders' caseloads enough to require a reduction in workforce.
- Though the bill is making the possession, casual exchange, and distribution of marijuana under one-half ounce legal, it is assumed that the average conviction for possessing, casually exchanging, or distributing marijuana involves an amount over one-half ounce.
- Most possession charges are usually punished with just a fine. It is assumed that increasing from one-half ounce to one ounce the amount of marijuana one can possess and making it punishable by fine only will not significantly impact local incarceration costs.
- The bill requires an offender attending drug offender school to pay a fee for attendance. It is assumed that the average offender can afford the fee to attend the school.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Jeffrey L. Spalding, Executive Director

/trm