



**Colorado
Legislative
Council
Staff**

HB17-1220

**REVISED
FISCAL NOTE**

(replaces fiscal note dated March 3, 2017)

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 17-0653

Date: March 17, 2017

Prime Sponsor(s): Rep. Becker K.; Wist
Sen. Gardner; Fields

Bill Status: Senate Judiciary

Fiscal Analyst: Clare Pramuk (303-866-2677)

BILL TOPIC: PREVENT MARIJUANA DIVERSION TO ILLEGAL MARKET

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue Cash Funds	Minimal increase.	
State Expenditures General Fund	Workload increase. Potential expenditure increase. See State Expenditures section.	
TABOR Impact	Minimal increase.	
Appropriation Required: None.		
Future Year Impacts: Ongoing minimal revenue increase and workload increase; potential expenditure increase.		

Summary of Legislation

The **reengrossed** bill limits the total number of medical or recreational use marijuana plants that can be possessed or grown on a residential property to 16 plants. Unless authorized by local law, a medical marijuana patient or primary caregiver is prohibited from possessing or cultivating more than 16 plants on a residential property and must locate his or her cultivation operation on a property other than a residential property and comply with any applicable local law requiring disclosure of the cultivation operation. Cultivation operations are subject to any county and municipal building and public health inspection required by local law. In addition, medical marijuana patients and caregivers who cultivate marijuana plants are required to comply with all local laws, regulation, and zoning and use restrictions.

A person who violates the provisions of the bill is subject to a:

- level 1 drug petty offense for a first offense, if the offense involves more than 12 plants;
- level 4 drug felony for a second or subsequent offense, if the offense involves more than 12 but less than 30 plants; or
- level 3 drug felony for a second on subsequent offense, if the offense involves more than 30 plants.

Comparable Crime

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. This bill creates a new factual basis for the offense of illegal growing of marijuana by limiting persons to no more than 16 marijuana plants in a residential property unless allowed by local ordinance. The penalty for a level 1 petty drug offense is a fine of up to \$1,000. The penalty for a level 3 drug felony is a fine of \$2,000 to \$500,000, two to four years incarceration, or both. The penalty for a level 4 drug felony is a fine of \$1,000 to \$100,000, six months to one year incarceration, or both. Between March 2, 2014, and March 2, 2017, there have been 148 felony convictions of at least one charge for growing more marijuana plants than are allowed by Colorado law or without the required statutory safeguards. Of those, the race/ethnic status of the offenders was 112 Caucasian, 5 African-American, 15 Asian, and 16 Hispanic; 123 were male and 25 were female. Given the low number of convictions, the fiscal note assumes a minimal increase in felony cases and convictions as a result of the bill.

State Revenue

Beginning in FY 2017-18, this bill is anticipated to increase state revenue by a minimal amount as described below.

Criminal fines. The bill may increase state cash fund revenue, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a level 1 petty drug offense is up to \$1,000. The fine penalty for a level 3 drug felony is \$2,000 to \$500,000, and the fine penalty for a level 4 drug felony is \$1,000 to \$100,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, based on the low number of criminal fines imposed in 2016, the fiscal note assumes that any revenue generated is likely to be minimal.

Court and administrative fees. To the extent that any additional convictions occur, this bill may also increase state fee revenue for a variety of court-related costs. In addition, if an offender is sentenced to probation, fee revenue will increase by \$50 per month supervised, per offender. Any such revenue is assumed to be minimal.

TABOR Impact

This bill increases state cash fund revenue from fines and fees, which will increase the amount of money required to be refunded under TABOR for FY 2017-18 and FY 2018-19. TABOR refunds are paid out of the General Fund. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount.

State Expenditures

Beginning in FY 2017-18, this bill may increase workload and state expenditures in the Judicial Department. It may also increase state General Fund expenditures in the Department of Corrections, as discussed below.

Judicial Department. To the extent that this bill results in any new case filings, workload will increase for district trial courts. If defendants are deemed indigent, workload and costs for the Office of the State Public Defender or the Office of the Alternate Defense Counsel may also increase. If an offender is sentenced to probation, workload will increase for the Probation Division. These impacts are assumed to be minimal and can be accomplished within existing appropriations.

Department of Corrections. To the extent that this bill increases the number of persons sentenced to the DOC, costs will increase. Should any convictions occur, the fiscal note assumes the DOC will request additional appropriations through the annual budget process. Based on current year expenditures, each year of incarceration costs the state about \$21,900. Each year of parole costs the state about \$4,600. For informational purposes, the average length of stay in prison for a level 3 drug felony offender is 23.8 months and the average length of stay in prison for a level 4 drug felony offender is 6.6 months. The average length of stay on parole for either a level 3 or level 4 drug felony offender is 9.5 months.

Local Government Impact

To the extent that medical marijuana patients and caregivers move their cultivation operations to non-residential locations to comply with this bill, local code enforcement personnel will have an increase in workload to inspect the premises to ensure that local regulations are being followed. Local law enforcement will continue to respond to complaints about marijuana being grown on residential property, but will now have state statutory authority with which to charge persons exceeding the 16 plant limit.

The bill increases workload for district attorneys to prosecute any new offenses under the bill. To the extent that any defendants convicted of a level 3 or level 4 drug felony receive a term of jail as part of their sentence, costs will increase. Because the courts have the discretion for sentencing, especially with respect to level 4 drug felonies, the precise impact at the local level cannot be determined. The cost to house an offender in county jails varies from about \$53 to \$114 per day. It is assumed that the impact of this bill will be minimal.

Denver County expenditures. The bill results in an increase in workload for the Denver County Court, managed and funded by the City and County of Denver. The court will try drug petty offense cases under the bill.

Effective Date

The bill takes effect January 1, 2018, if no referendum petition is filed.

State and Local Government Contacts

Corrections	Counties	District Attorneys
Fire Chiefs	Judicial	Law
Municipalities	Public Health and Environment	
Revenue	Sheriffs	