



**Colorado
Legislative
Council
Staff**

Bill 9

FISCAL NOTE

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

Drafting Number: LLS 17-0136
Prime Sponsor(s):

Date: September 16, 2016
Bill Status: Committee on Cost-Benefit
Analysis of Legalized Marijuana Bill
Request

Fiscal Analyst: Larson Silbaugh (303-866-4720)

BILL TOPIC: DEFINE ASSIST FOR PERSONAL MARIJUANA CULTIVATION

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018	FY 2018-2019
State Revenue	See State Revenue Section.		
State Expenditures	See State Expenditures Section.		
TABOR Impact	See TABOR Impact Section.		
Appropriation Required: None.			
Future Year Impacts: Ongoing impacts to state revenue and expenditures.			

Summary of Legislation

Requested by the Committee on Cost-Benefit Analysis of Legalized Marijuana in Colorado, this bill defines "assisting" as helping, supporting, or advising someone growing marijuana plants for personal use in their primary residence. The definition of assisting does not allow for growing the plants on someone else's behalf and only applies to non-medical marijuana.

Background

Voter's passed Amendment 64 in 2012 which allowed for the personal use and state regulation of marijuana. Under Colorado law, possessing less than one ounce of marijuana or growing less than six marijuana plants is allowed. Amendment 64 specified that it was not illegal to assist an individual in growing marijuana plants, but this term was not defined in the measure passed by voters.

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., 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 clarifies what constitutes a factual basis for offenses relating to marijuana cultivation for personal consumption. The crime is either a level 1 drug misdemeanor (offenses that involve fewer than six plants) or a level 4 drug felony (offenses that involve between 6 and 30 plants).

Between January 1, 2014, and December 31, 2015, there were 16 convictions for offenses related to cultivating less than 30 marijuana plants:

- seven convictions of a level 4 drug felony (seven Caucasian males); and
- nine convictions of level 1 drug misdemeanor (one Hispanic female, one Caucasian female, one African American male, and six Caucasian males).

State Revenue

This clarification may increase or decrease the number of criminal filings. If it increases the number of filings and the number of people fined, it will increase state fine revenue. If the clarification results in fewer filings and a lower number of people fined, the bill will decrease state fine revenue.

Beginning in FY 2016-17, this bill is anticipated to increase or decrease state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a drug level 4 felony is between \$2,000 and \$500,000. The fine penalty for a drug level 1 misdemeanor is between \$500 and \$5,000. 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 fines imposed in 2015, the fiscal note assumes that any revenue impact is likely to be less than \$5,000.

TABOR Impact

This bill may impact state revenue from criminal fines, which will impact the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund.

State Expenditures

This bill is expected to have a minimal impact on state expenditures beginning in FY 2016-17. The bill could result in more prosecutions and convictions of cultivating marijuana because it takes away the defense that individuals are assisting others when they grow more than allowed for personal use. This bill may also reduce prosecutions and convictions of cultivating marijuana because it makes clear that helping or supporting is allowed.

Department of Corrections. This bill may increase or decrease workload and costs for the Department of Corrections (DOC). To the extent that any additional convictions of marijuana cultivation occur and a person is sentenced to a term of incarceration, costs for the DOC will increase. To the extent that a reduction in convictions of marijuana cultivation occur and fewer

people are sentenced to a term of incarceration, costs for the DOC will decrease. For informational purposes, offenders placed in a private contract prison cost the state about \$59.90 per offender per day, including the current daily rate of \$56.02 and an estimated \$3.88 per offender per day for medical care provided by the DOC. No impact is expected in the first year because of the estimated time for criminal filing, trial, disposition, and sentencing. The fiscal note assumes that any increases or decreases in costs in future years arising under this bill will be addressed through the annual budget process.

Judicial Department. The bill may increase or decrease the workload or costs for the Office of the State Public Defender and Office of Alternate Defense Counsel, to provide representation for any persons deemed to be indigent. If the number of cases increase because of the bill, then the Judicial Department workload will increase. If the number of cases decrease because of the bill, then the Judicial Department workload will decrease. The fiscal note assumes any such impacts are minimal and will not require an increase in appropriations for any agency within the Judicial Department.

Local Government Impact

Consistent with the rest of this analysis, it is not clear if this bill will increase or decrease the workload and revenue for local governments. The bill could result in more prosecutions and convictions of cultivating marijuana because it takes away the defense that individuals are assisting others when they grow more than allowed for personal use. This bill may reduce prosecutions and convictions of cultivating marijuana because it makes clear that helping or supporting is allowed. Either increases or decreases are expected to be minimal because between January 1, 2014, and December 31, 2015, there were only 16 convictions for offenses related to cultivating less than 30 marijuana plants.

Misdemeanor offenses in county courts. First, the bill may alter workload for district attorneys related to prosecuting offenses for cultivating marijuana. Second, to the extent that this bill increases or decreases misdemeanor convictions and offenders are sentenced to jail, costs will change. Under current law, a court may sentence an offender to jail for a level 1 drug misdemeanor for a period of between 6 and 18 months. Because the courts have the discretion of incarceration or imposing a fine, 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. For the current fiscal year, the state reimburses county jails at a daily rate of \$52.74 to house state inmates. It is assumed that the impact of this bill will be minimal.

Denver County Court. To the extent that the bill results in a change in workload for the Denver County Court, managed and funded by the City and County of Denver, revenue and costs will change. The court tries misdemeanor cases under the bill where an individual is cultivating marijuana on someone else's behalf or if that cultivation does not take place at their primary residence. Probation services in the Denver County Courts may also experience a minimal change in workload and revenue resulting from fewer or greater numbers persons convicted as a result of the bill.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State and Local Government Contacts

Counties
Corrections
Public Safety
Judicial Criminal

Municipalities
Revenue
Sheriff's

Governor's Marijuana Office
Public Health and Environment
District Attorneys