

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**  
**Revision 1**

**March 13, 2017**

**TO:** Honorable Joe Moody, Chair, House Committee on Criminal Jurisprudence

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB81** by Moody (Relating to a civil action to collect a civil penalty for possession of certain small amounts of marihuana and an exception to prosecution for possession of associated drug paraphernalia.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB81, As Introduced: a positive impact of \$4,266,206 through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	\$2,133,103
2019	\$2,133,103
2020	\$2,133,103
2021	\$2,133,103
2022	\$2,133,103

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Probable Revenue (Loss) from <i>Various General Revenue</i> <i>Dedicated Accounts</i>	Probable Revenue (Loss) from <i>Judicial Fund</i> 573
2018	\$2,133,103	(\$1,211,775)	(\$279,640)
2019	\$2,133,103	(\$1,211,775)	(\$279,640)
2020	\$2,133,103	(\$1,211,775)	(\$279,640)
2021	\$2,133,103	(\$1,211,775)	(\$279,640)
2022	\$2,133,103	(\$1,211,775)	(\$279,640)

**Fiscal Analysis**

The bill would amend the Health and Safety Code to decriminalize possession of one ounce or less

of marihuana. Instead, possession of one ounce or less would make the possessor liable to the State for a civil penalty not to exceed \$250. However, a court must waive the penalty if a court finds a person subject to the penalty to be indigent and may assign the person to no more than 10 hours of community service.

Under the bill, the court also would be authorized to waive the civil penalty if the person cited for possession either: (1) completes a substance abuse program; or (2) performs up to ten hours of community service as recommended by the court.

Because the bill does not specify where the money collected from the civil penalty goes other than to say that the possessor of the marihuana would be liable to the State for a civil penalty, in this analysis it is assumed 100 percent of the civil fee revenue would be directed to the state (General Revenue), rather than remain with the county.

By decriminalizing the cases described above, it is estimated that court cost revenue loss would be \$1,553,558 each fiscal year in All Funds, offset by a revenue gain in civil penalties of \$2,195,245 each fiscal year in General Revenue.

The bill would take effect September 1, 2017.

## **Methodology**

Based upon historical records, the Office of Court Administration estimates that in fiscal year 2016 there were 33,773 convictions or orders of deferred adjudication in possession cases involving one ounce or less of marihuana, a Class B misdemeanor. Assuming a similar caseload in future years, the resulting loss in state revenue from the average court costs for a Class B misdemeanor are anticipated to be \$115 per case, or \$3,883,895 ( $\$115 \times 33,773$ ), adjusted by a 40 percent collection rate for Class B misdemeanors ( $0.40 \times \$3,883,895$ ), for a total of \$1,553,558 each fiscal year in forgone court-cost revenues. Court costs are deposited to numerous state accounts, including General Revenue (4 percent of \$115, or \$62,142 of \$1,553,558); various General Revenue-Dedicated Accounts (78 percent of \$115, or \$1,211,775 of \$1,553,558); and the Judicial Fund No. 573 (18 percent of \$115, or \$279,640 of \$1,553,558).

The table above summarizes the fiscal impact for various General Revenue-Dedicated accounts that would see a revenue loss which include, but are not limited to: the Fair Defense Account, the Criminal Justice Planning Fund, and the Emergency Radio Infrastructure Fund.

This court cost revenue loss would be offset by a maximum \$250 civil penalty assessed in those cases were a person was not instead 1) found to be indigent or 2) directed to attend a substance abuse program or performance community service. Assuming 50 percent of the 33,773 expected cases are assessed the maximum civil penalty of \$250 would result in an annual revenue gain of \$4,221,625. However, for purposes of this analysis, it is assumed judges statewide might assess instead on average a \$81.25 civil penalty, which in 33,773 cases equates to \$2,744,056. Assuming that 20 percent of persons subject to the penalty instead would be found indigent or given deferred adjudication reduces expected revenue to \$2,195,245 ( $0.80 * \$2,744,056$ ).

Assuming 100 percent of civil filing fees are deposited to General Revenue, the bill would result in a net revenue gain to the General Revenue account of \$2,133,103 each fiscal year ( $\$2,195,245 - \$62,142$ ), offset by revenue losses to other state accounts.

## Local Government Impact

The bill would reduce possession of a certain amount of marihuana to a civil penalty. According to the Office of Court Administration (OCA), the bill would result in 56,086 new cases being handled by justice courts as civil cases instead of county-level courts as criminal cases. There will also be a corresponding decrease in the workload of the county-level courts. OCA estimates the loss to counties from the loss of criminal court cost revenue to be \$1,925,061 annually. Additionally, OCA estimates the loss to counties from criminal fine revenue to be \$5,448,113 per year, assuming the average fine to be \$250 and a 65 percent collection rate. Since court appointed counsel must be provided for Class B misdemeanors, but not civil cases, OCA anticipates there may be a positive fiscal impact to the counties due to a reduction in the costs of court appointed counsel.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 644 Juvenile Justice Department, 405 Department of Public Safety, 537 State Health Services, Department of

**LBB Staff:** UP, KJo, MW, GDz, SD, JPo, LM, JGA, KVe