

SB 40

Relating to classification of controlled substance offenses

SB 40 reduces unlawful manufacture of marijuana from a Class A felony to a Class B felony and creates varying penalties for marijuana possession based on weight ranging from a Class C felony to a Class B violation. Currently, possession of one or more ounces of marijuana is a Class B felony regardless of weight; however, sentencing guidelines on the crime severity scale vary depending on amounts of possession.

The measure has an estimated fiscal impact savings of \$1,575,004 General Fund to the Department of Corrections in the 2013-2015 biennium and approximately \$3 million General Fund in 2015-2017. These estimated cost savings would be funds that are no longer distributed to community corrections departments for felony probation as a result of those cases becoming misdemeanor's under the measure.

Depending on the number of cases where defendants are eligible for court-appointed counsel, the Public Defense Services Commission anticipates savings of up to \$855,000 General Fund in the 2013-2015 biennium for the reduction of marijuana offenses. There is also a minimal fiscal impact savings to the Judicial Department.

The Public Safety Subcommittee recommends SB 40 be reported out do pass.

Joint Committee on Ways and Means

Carrier – House: Rep. Williamson

Revenue: No revenue impact

Fiscal: Fiscal statement issued

Action: Do Pass the B-Engrossed Measure

Vote:

House

Yeas:

Nays:

Exc:

Senate

Yeas:

Nays:

Exc:

Prepared By: John Terpening, Legislative Fiscal Office

Meeting Date: June 19, 2013

WHAT THE MEASURE DOES: Reduces manufacture of marijuana from a Class A felony to a Class B felony. Reduces possession of 1 to 4 ounces of marijuana to a Class B misdemeanor, or a greater amount to a Class C felony. Makes possession of less than 1/4 ounce marijuana product a Class B misdemeanor, or a greater amount to a class C felony. Provides for violation fine of \$650. Declares and emergency, effective upon passage

ISSUES DISCUSSED:

- Fiscal impact of the measure

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: The measure would put marijuana in line with other Schedule II controlled substances, but breakout marijuana even further by making lesser amounts misdemeanors instead of felonies.

FISCAL IMPACT OF PROPOSED LEGISLATION**Measure: SB 40 – B**Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session
Legislative Fiscal Office***Only Impacts on Original or Engrossed Versions are Considered Official***Prepared by: John Terpening
Reviewed by: Steve Bender, Monica Brown
Date: 5-31-2013**Measure Description:**

Reduces unlawful manufacture of marijuana to Class B felony.

Government Unit(s) Affected:

Department of Corrections, Department of Justice, District Attorneys and their Deputies, Judicial Department, Oregon Criminal Justice Commission, Public Defense Services Commission

Summary of Expenditure Impact:

Agency – Fund Type	2013-2015 Biennium	2015-2017 Biennium
Department of Corrections – General Fund		
Special Payments	(\$1,575,004)	(\$3,034,690)
Agency – Fund Type	2013-2015 Biennium	2015-2017 Biennium
Public Defense Services Commission – General Fund	(\$855,200)	(\$855,200)

Local Government Mandate:

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

Analysis:

The measure reduces unlawful manufacture of marijuana from a Class A felony to a Class B felony. The Criminal Justice Commission (CJC) notes that both the Class A and Class B felony are an 8 on the sentencing guidelines grid, so the time served is not expected to change.

The measure creates varying penalties for marijuana possession based on weight from a Class C felony for more than 4 ounces; Class B misdemeanor for 1 to less than 4 ounces; Class B violation for less than one ounce. Additionally the measure establishes a Class C felony for possession of one-quarter ounce or more of marijuana product and a Class B misdemeanor for less than one-quarter ounce of marijuana product.

Currently, possession of one or more ounces of marijuana is a Class B felony regardless of weight; however, sentencing guidelines vary depending on the amounts of possession. For example, possession of 1-4 ounces typically falls in the 0-5 range on the crime severity scale and result in 18 months felony probation. Possession of 4-8 ounces generally falls in the 6-7 level on the crime severity scale and receives 36 months felony probation. Possession of 8 ounces or more is a level 8 on the crime severity scale and typically receives a minimum of 36 months felony probation.

In order to estimate the effect of the measure, the Criminal Justice Commission (CJC) used current offender population sentencing data to determine the potential future changes on offender placement with the new classifications. Of the 432 cases of marijuana possession sentenced to felony probation in 2012, CJC estimates that 346 (80%) would be reduced to Class C misdemeanors under the provisions of the measure. The remaining cases are the higher levels of possession and would remain under felony probation.

The reduction of the crime classifications for possession of marijuana is anticipated to have a fiscal impact savings to the Department of Corrections (DOC). DOC reimburses community corrections for

felony probation cases at a cost per day estimate of \$8.64. The cost savings estimates in the table above are funds that would no longer be distributed from DOC to the community corrections departments for felony probation, as these cases would become Class A or Class C misdemeanors under the measure. DOC anticipates seeing an incremental reduction through the first 18 months of the 2013-15 biennium with the savings fully applied in 2015-17.

These cost savings estimates could vary depending on the actual number of cases, convictions and length of sentences issued. Thus far in the 2013 legislative session, this is the ninth fiscal impact statement issued by the Legislative Fiscal Office on measures effecting the corrections population. The cumulative effect of similar measures passed during the legislative session will impact the Corrections Population Forecast produced by the Office of Economic Analysis which serves as the basis for funding the DOC operations and community corrections budgets.

The Public Defense Services Commission (PDSC) notes that the cost of representation for a Class A felony is \$1,300; the average cost for a Class B felony is \$1,000; the average cost of a Class C felony is \$750; and the average cost for a misdemeanor is \$350. An estimated 604 cases per year have charges of manufacture of marijuana and would be reduced from a Class A to a Class B felony. Additionally, using the CJC numbers provided above, of the 432 marijuana possession convictions, 346 cases per year would be reduced from Class B felony to Class C misdemeanor and 86 would be reduced from a Class B felony to a Class C felony. Assuming all defendants would be eligible for court-appointed counsel, the estimated yearly savings to PDSC could be as much as \$427,600 General Fund from the classification reductions.

The Judicial Department estimates that to conduct a felony trial costs \$366 more on average than a misdemeanor trial. The reduction in felony trials to misdemeanor trials is anticipated to have a minimal fiscal impact savings to the Department.