

**FINAL
FISCAL NOTE**

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| Drafting Number: LLS 14-0046 | Date: July 16, 2014 |
| Prime Sponsor(s): Sen. Steadman Rep. May | Bill Status: Signed into Law |
| | Fiscal Analyst: Hillary Smith (303-866-3277) |

SHORT TITLE: MARIJUANA CRIMINAL PROVISION CLEAN UP

| Fiscal Impact Summary* | FY 2013-2014 (Current Year) | FY 2014-2015 | FY 2015-2016 |
|---|--------------------------------|-----------------------|-----------------------|
| State Revenue | | <u>up to \$33,250</u> | <u>up to \$33,250</u> |
| Cash Funds | | up to \$33,250 | up to \$33,250 |
| State Expenditures | <u>\$4,120</u> | <u>\$38,250</u> | <u>\$38,250</u> |
| Cash Funds | \$4,120 | \$38,250 | \$38,250 |
| FTE Position Change | | | |
| Appropriation Required: \$4,120 - Dept. of Revenue (FY 2013-14); \$38,250 - Dept. of Human Services (FY 2014-15) | | | |

* This summary shows changes from current law under the bill for each fiscal year.

Summary of Legislation

This bill affects a number of laws related to criminal penalties for offenses involving marijuana, as explained below.

Underage possession or consumption offenses. The bill adds consumption and possession of marijuana and possession of marijuana paraphernalia to the crime of underage possession or consumption of alcohol. The bill clarifies that the offenses are unclassified petty offenses, and also changes the penalty structure for the crimes as follows:

- for the first offense, there is a fine of up to \$100, a requirement to complete substance abuse education classes, or both;
- for the second offense, there is a fine of up to \$100, a requirement to complete substance abuse education classes, a possible order for substance abuse assessment and related treatment, and up to 24 hours of public service; and
- for the third or subsequent offense, there is a fine of up to \$250, an order to complete a substance abuse assessment and any related treatment, and up to 36 hours of public service.

In addition to any fines or other punishments, any person convicted of the offense of underage possession or consumption of marijuana will be subject to a \$25 surcharge, which is credited to the Adolescent Substance Abuse Prevention and Treatment Fund within the Colorado Department of Human Services (DHS). A person convicted of underage possession or consumption of alcohol is already subject to the surcharge.

Sealing of records. Under current law, an offender convicted of underage possession or consumption of alcohol may petition the court one year after his or her conviction to have the record sealed. This bill provides that upon dismissal of an underage possession or consumption or alcohol or marijuana case pursuant to a deferred judgment or diversion or other action, or upon completion of substance abuse education and payment of any fine associated with a first conviction, the court must immediately order the case sealed. Upon the expiration of one year from the date of a second or subsequent conviction, the offender may petition the court for an order sealing his or her record of conviction. The court must grant the petition if the offender has not been arrested for, charged with, or convicted of any felony, misdemeanor, or petty offense during the year following his or her conviction. The petitioner is responsible for obtaining, paying for, and submitting a copy of his or her criminal history record.

Open marijuana container violations. Under current law, a person in a motor vehicle that is on a public highway of the state may not knowingly consume or use marijuana or possess an open marijuana container. A person who violates this law commits a class A traffic infraction and is subject to a fine of \$50 and a surcharge of \$7.80. This bill changes the definition of an open marijuana container crime to require that the prosecution prove that the container has a broken seal, that the contents were partially removed, and that there is evidence that marijuana was consumed within the vehicle. Current law only requires proof of one of these three elements.

P.O.S.T. Board training. Finally, the bill encourages the Peace Officer Standards and Training (P.O.S.T.) Board to offer an advanced roadside impaired driving enforcement (ARIDE) training course as an elective to basic field sobriety training. Currently, the board is encouraged to offer the course at basic academy training. The bill also directs the P.O.S.T. Board, subject to available funding, to provide drug recognition expert training to certified peace officers who will act as trainers in ARIDE. Currently, the P.O.S.T. board is directed to provide ARIDE training to drug recognition experts so that those experts can provide the training to other peace officers.

Background

Under current law, the crime of underage possession or consumption of alcohol is not a classified offense until the third or subsequent offense, at which point it becomes a class 2 misdemeanor. Table 1 summarizes the penalties for underage possession and consumption crimes and other marijuana offenses under current law and under the bill.

| Table 1. Penalties for Underage Possession or Consumption Offenses and Marijuana Offenses Under Current Law and SB14-129 | | |
|---|---|--|
| Offense | Penalties Under Current Law | Penalties under SB14-129 |
| First Offense of Underage Possession or Consumption <i>Section 18-13-122, C.R.S.</i> | Unclassified offense, only pertains to alcohol. Punishable by a maximum fine of \$250. The court may order up to 24 hours of public service and completion of an alcohol evaluation, assessment, education, or treatment program at the offender's own expense. | Unclassified petty offense, pertains to alcohol and marijuana. Punishable by a maximum fine of \$100, a requirement to complete a substance abuse education program, or both. |

| Table 1. Penalties for Underage Possession or Consumption Offenses and Marijuana Offenses Under Current Law and SB14-129 | | |
|--|---|--|
| Offense | Penalties Under Current Law | Penalties under SB14-129 |
| <p>Second Offense of Underage Possession or Consumption</p> <p><i>Section 18-13-122, C.R.S.</i></p> | <p>Unclassified offense, only pertains to alcohol.</p> <p>Punishable by a maximum fine of \$500 and mandatory completion of an alcohol evaluation, assessment, education, or treatment program at the offender's own expense.</p> <p>The court may also order up to 36 hours of public service.</p> | <p>Unclassified petty offense, pertains to alcohol and marijuana.</p> <p>Punishable by a maximum fine of \$100 and an order to complete a substance abuse education program.</p> <p>The court may also order the offender to submit to a substance abuse assessment and to complete any related treatment.</p> <p>The court may also order up to 24 hours of public service.</p> |
| <p>Third or Subsequent Offense of Underage Possession or Consumption</p> <p><i>Section 18-13-122, C.R.S.</i></p> | <p>Class 2 misdemeanor, only pertains to alcohol.</p> <p>Punishable by 3 to 12 months in jail, a fine of \$250 to \$1,000, or both, and mandatory completion of an alcohol evaluation, assessment, education, or treatment program at the offender's own expense.</p> | <p>Unclassified petty offense, pertains to alcohol and marijuana.</p> <p>Punishable by a maximum fine of \$250 and an order to submit to a substance abuse assessment and to complete any related treatment.</p> <p>The court must order the offender to complete 36 hours of public service.</p> |
| <p>Possession of Two Ounces or Less of Marijuana</p> <p><i>Section 18-18-406 (5)(a)(I), C.R.S.</i></p> | <p>Drug Petty Offense</p> <p>Punishable by a maximum fine of \$100.</p> | <p>Not affected (N/A)</p> |
| <p>Open and Public Display, Consumption, or Use of Two Ounces or Less of Marijuana</p> <p><i>Section 18-18-406 (5)(b)(I), C.R.S.</i></p> | <p>Drug Petty Offense</p> <p>Punishable by a maximum fine of \$100 and up to 24 hours of public service.</p> | <p>N/A</p> |
| <p>Possession of Drug Paraphernalia</p> <p><i>Section 18-18-428 (2), C.R.S.</i></p> | <p>Drug Petty Offense</p> <p>Punishable by a maximum fine of \$100.</p> | <p>Illegal possession of marijuana paraphernalia by a person under 21 years old is an unclassified petty offense, punishable in accordance with the penalty structure for underage possession or consumption offenses, explained above.</p> |

According to data provided by the Judicial Department, there are approximately 7,000 cases filed per year concerning underage possession or consumption of alcohol. This fiscal note assumes that cases involving underage possession or consumption of marijuana and possession of marijuana paraphernalia are currently filed under Section 18-18-406, C.R.S. and Section 18-18-428, C.R.S. According to data provided by the Judicial Department, there are approximately:

- 110 cases filed per year for possession of two ounces or less of marijuana;

- 10 cases filed per year for open and public display, consumption, or use of two ounces or less of marijuana; and
- no cases filed per year for possession of drug paraphernalia.

State Revenue

This bill will increase revenue to the Adolescent Substance Abuse Prevention and Treatment Fund within the DHS by \$38,250. It also has the potential to decrease revenue from criminal fines by less than \$5,000, for a total change in revenue of up to \$33,250.

Adolescent Substance Abuse Prevention and Treatment Fund. By adding marijuana crimes to the current crime of underage possession of alcohol, this bill will increase cash fund revenue by approximately \$38,250 per year, beginning in FY 2014-15.

This fiscal note assumes that as a result of the bill, approximately 4,200 new cases of underage possession or consumption will be filed per year related to marijuana, with a conviction rate of approximately 40 percent (1,700 convictions per year). Although the bill allows the surcharge to be waived upon a finding of indigence, this fiscal note estimates that payment of the surcharge will not differ substantially from the current rate of 90 percent for alcohol-related offenses. Therefore, the bill will result in 1,530 individuals paying a surcharge of \$25, for a total of \$38,250 in additional revenue per year.

Criminal fines. Beginning in FY 2014-15, this bill is anticipated to decrease state revenue from criminal fines by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The bill reduces fine penalties for underage possession and consumption (from \$250 to \$100 for a first offense, from \$500 to \$100 for a second offense, and from a range of \$250 to \$1,000 to \$250 for a third or subsequent offense). In addition, offenses that were previously filed as possession or consumption of marijuana or possession of drug paraphernalia (drug petty offenses, with a maximum fine of \$100) may now be filed as underage possession or consumption. To the extent that crimes that were once filed as drug petty offenses are now filed as a second or subsequent offense of underage possession or consumption, revenue from criminal fines could increase. However, because the courts have the discretion of incarceration, imposing a fine, or both, the overall impact to state revenue has not been estimated.

In addition, by requiring the prosecution to prove three elements related to the crime of open marijuana containers, convictions and fine revenue related to open marijuana container violations are expected to decrease. Violation of the open marijuana container law is class A traffic infraction and violators are subject to a fine of \$50 and a surcharge of \$7.80. Since July 1, 2013, there have been 97 cases filed under the open marijuana container law. This fiscal note estimates that cases filed and fine revenue will decline by a minimal amount.

State Expenditures

This bill is expected to increase state expenditures by \$4,120 from the Marijuana Cash Fund in FY 2013-14 and by \$38,250 from the Adolescent Substance Abuse Prevention and Treatment Fund in FY 2014-15 and each year thereafter.

Department of Revenue. The bill requires a one-time Marijuana Cash Fund appropriation of \$4,120 in FY 2013-14 to the Department of Revenue (DOR). The funding will be reappropriated to the Office of Information Technology. Funding is necessary to make updates to the department's Driver License System to generate revocation letters connected to a conviction of underage possession or consumption of marijuana. Upon notification by the court, the DOR is required to revoke the driver's license of anyone who is convicted of underage possession or consumption and who fails to complete court-ordered treatment or anyone who is convicted for a second or subsequent time of underage possession or consumption. The DOR's current Driver License System is programmed to generate three letters corresponding to a first, second, or third or subsequent conviction of underage possession or consumption of alcohol. As a result of this bill, each letter needs to be updated to include language concerning marijuana. The Office of Information Technology will require 40 hours at \$103 per hour to make and test the necessary adjustments to the system, for a total appropriation of \$4,120.

The Division of Motor Vehicles, Driver Control Section, and Hearings Division within the DOR are all likely to see an increase in workload due to new citations and revocations related to underage possession or consumption of marijuana. This fiscal note assumes that the change in workload does not require additional appropriations at this time.

Department of Human Services. The bill appropriates \$38,250 from the Adolescent Substance Abuse Prevention and Treatment Fund to the Department of Human Services in FY 2014-15 and each year thereafter. The bill specifies that the funds are to be used for behavioral health services for adolescent substance abuse prevention and treatment programs, with \$28,687 for treatment and detoxification contracts, and \$9,563 for prevention contracts. The department indicates that it will evaluate the current coverage of treatment and prevention services and will use the funds to expand its service capacity in areas that are not currently covered.

Judicial Department. The bill is likely to change the number of cases filed in state courts, but is not expected to require a change in appropriations for the Judicial Department. Although cases related to underage possession or consumption are expected to increase, it is likely that these cases are already being filed under other provisions of current law. In addition, cases related to open marijuana containers are expected to decrease because the prosecution will now be required to prove three elements related to the charge, as opposed to one. Since the law establishing the crime of open marijuana containers went into effect on July 1, 2013, 97 cases have been filed. Any change in cases filed is expected to be minimal, and will not require an adjustment in appropriations to the Judicial Department.

Department of Law. The bill encourages the P.O.S.T. Board within the Department of Law to offer an advanced roadside impaired driving training course as an elective to basic field sobriety training, rather than at basic academy training. This change does not affect appropriations or workload at the department because it simply delays when certain information would be offered during training. The bill also directs the P.O.S.T. Board, subject to available funding, to provide drug recognition expert training to certified peace officers who will act as trainers in ARIDE. This change also does not affect appropriations or workload at the department because the department already received spending authority for these types of efforts from House Bill 13-1317, which was enacted in 2013.

Local Government Impact

This bill impacts local governments by replacing the class 2 misdemeanor of a third or subsequent conviction of underage possession or consumption with an unclassified petty offense. The penalty for a class 2 misdemeanor is 3 to 12 months in jail, a fine of \$250 to \$1,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. It is assumed that the possible reduction in jail sentences as a result of this bill will be minimal.

In addition, cases of underage possession or consumption filed in Denver County Court are expected to increase, whereas drug petty offenses related to marijuana possession or consumption and possession of marijuana paraphernalia may decrease. Finally, traffic infractions filed in county and municipal courts are likely to decrease due to the requirement that the prosecution prove three elements related to open marijuana container violations, rather than one element. It is assumed that the change in case filings and associated revenue will be minimal.

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.

Previous sections of the fiscal note address whether the crimes addressed by the bill can be charged under current law and provide data on the number of cases filed related to those offenses. According to data from the Judicial Branch, over the past five years, 30,573 cases of underage possession or consumption were filed and 589 cases of marijuana possession or consumption of less than two ounces were filed. In 2013, 97 open marijuana container violations were filed. Table 2 provides data concerning the gender and ethnicity of the offenders potentially affected by the bill.

| Table 2. Gender and Ethnicity Data Related to the Crimes Addressed by SB14-129 | | | | | |
|---|--|---|--|---|---------------------------------------|
| Underage Possession Cases from 2009 through 2013 | | Marijuana Possession or Consumption Cases from 2009 through 2013 | | Open Marijuana Container Violations from 2013* | |
| Gender Data | Ethnicity Data | Gender Data | Ethnicity Data | Gender Data | Ethnicity Data |
| 24,232 (M); 10,516 (F); 34 other | 30,573 (W) 2,191 (H) 1,138 (B); 393 other; 269 (I); 218 (A) | 480 (M); 107 (F); 6 other | 495 (W); 39 (H); 46 (B); 10 other; 1 (I); 2 (A) | 68 (M); 29 (F); | 75 (W); 8 (H); 12 (B); 2 (A) |

*The law establishing this crime went into effect on May 28, 2013.
M = Male; F = Female; W = White; H = Hispanic; B = Black; I = Native American; A = Asian

Effective Date

The bill was signed into law by the Governor and took effect on June 6, 2014, and applies to offenses committed on or after July 1, 2014.

State Appropriations

The Department of Revenue requires an appropriation of \$4,120 from the Marijuana Cash Fund for FY 2013-14. The Department of Human Services requires an appropriation of \$38,250 from the Adolescent Substance Abuse Prevention and Treatment Fund for FY 2014-15, of which \$28,687 will be allocated for treatment and detoxification contracts, and \$9,563 for prevention contracts.

State and Local Government Contacts

Counties
Human Services
Local Affairs
Public Safety
Treasury

Corrections
Judicial
Municipalities
Revenue

District Attorneys
Law
Public Health and Environment
Sheriffs