Fiscal Note & Local Impact Statement

122 nd General Assembly of Ohio

BILL: **S.B. 2** DATE: **March 12, 1997**

STATUS: **As Reported by House Criminal Justice** SPONSOR: **Sen. Blessing**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **Eliminates affirmative defense for possession of marihuana for medicinal purposes**

State Fiscal Highlights

STATE FUND	FY 1997	FY 1998	FUTURE YEARS
General Revenue Fund			
Revenues	Potential minimal gain	Potential minimal gain	Potential minimal gain
Expenditures	Potential minimal decrease	Potential minimal decrease	Potential minimal decrease
Crime Victims Reparation Fund			
Revenues	Potential minimal gain	Potential minimal gain	Potential minimal gain
Expenditures	- 0 -	- 0 -	- 0 -

- By eliminating a potential defense, there could be a slight increase in convictions which could produce a potential minimal gain in revenues to the state as the result of increased fine collection. The bill also could result in a potential minimal decrease in state expenditures for trials if fewer cases go to trial with the elimination of a potential defense.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1997	FY 1998	FUTURE YEARS
Counties			
Revenues	Potential minimal gain	Potential minimal gain	Potential minimal gain
Expenditures	Potential minimal decrease	Potential minimal decrease	Potential minimal decrease
Municipalities			
Revenues	Potential minimal gain	Potential minimal gain	Potential minimal gain
Expenditures	Potential minimal decrease	Potential minimal decrease	Potential minimal decrease

- By eliminating a potential defense, there could be a slight increase in convictions which could produce a potential minimal gain in revenues to both counties and municipalities resulting from increased collection of fines and local court costs. The bill also could result in a potential minimal decrease in local expenditures related to prosecution, adjudication, indigent defense, and incarceration, if fewer cases go to trial as one avenue of defense is eliminated.

Detailed Fiscal Analysis

Provisions of the Bill

Current law allows a person to offer the defense that their possession of marihuana is allowable as they have a written recommendation by a licensed physician to use the substance for medicinal purposes. The bill would eliminate the existing "medicinal use" affirmative defense under state law.

Effects of the Bill

According to a representative of the Ohio Criminal Sentencing Commission, due to the wording of the existing statute and the combination of federal, state, and local laws, the number of cases in which the affirmative defense of possession of marihuana for medicinal use likely would be invoked is estimated as minimal, and would almost exclusively be considered to be minor misdemeanor violations. The reasoning behind this estimate is that despite the fact that current Ohio law provides for the affirmative defense of possession of marihuana solely for medicinal purposes, the following combination of factors reduce the likelihood that it will be widely used: 1) it does not apply to either federal or municipal code addressing possession of marihuana and thus a person can still be charged and convicted under either; 2) it is only one possible defense to the charge of possession of marihuana and shifts the burden of proof to the accused; and 3) existing federal and state laws and regulations regarding the practice of medicine leave physicians vulnerable to potential prosecution and revocation or suspension of their license for issuing the required written recommendation.

Since it is estimated that the number of cases in which the currently permissible affirmative defense of possession for medicinal purposes would be invoked is small to begin with, the number of additional prosecutions that could result from removing that defense should be no more than minimal. This being said, it is estimated that the bill could produce a potential minimal gain in revenues at both the state and local levels as a result of increased collection of fines and state and local court costs as a result of the loss of this defense mechanism possibly leading to potential additional convictions. Fine proceeds in state misdemeanor cases go entirely to the county treasury, while state court costs of $20 per case are divided between the General Revenue Fund (GRF) and the Crime Victims Reparations Fund on the basis of $11 and $9 respectively. Local court costs, which vary according to jurisdiction, go entirely to the county or municipality operating the court.

In examining the impact of the bill as it relates to expenditures, it is estimated that it could result in a potential minimal decrease in expenditures at both the state and local levels. Specifically, since the bill removes the affirmative defense of possession for medicinal use, it is possible that the number of cases currently being tried would decrease as offenders choose to avoid the personal costs of going to trial and instead plead guilty. Currently, the cost of adjudication and prosecution are borne by the county or municipality operating the court, with the cost of indigent defense split between the county (53 percent) and state (47 percent). Incarceration costs for state code misdemeanors are the complete responsibility of the county in which the person is convicted and average $52 per day. Assuming that the number of cases going to trial will be reduced, expenditures for the above items would more than likely decrease.

❑ *LBO staff: Jeff Newman, Graduate Researcher*