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June 30, 2017

Honorable Shantel Krebs
Secretary of State
500 E. Capitol Avenue
Pierre, SD 57501

RECEIVED

JUN 30 2017

S.D. SEC. OF STATE

Dear Secretary Krebs,

This office received an initiated measure to legalize certain amounts of marijuana, drugs made from marijuana, and drug paraphernalia, and to regulate and tax marijuana establishments. The initiated measure requires a prison or jail cost estimate statement.

Enclosed is a copy of the initiated measure, in final form, that was received by this office. In accordance with SDCL 2-1-19, I hereby submit the Legislative Research Council's prison or jail cost estimate with respect to this initiated measure. Due to the length and extent of this initiated measure, I have included both the full analysis and a condensed statement, should you choose to use the shorter version for the ballot.

It is my understanding that the Attorney General's statement pursuant to 12-13-25.1 has been filed directly with you by the Office of the Attorney General.

Sincerely,

A handwritten signature in blue ink that reads "Jason Hancock". The signature is fluid and cursive.

Jason Hancock
Director

jml/skg

Enclosures

CC: The Honorable Marty Jackley, Attorney General

PRISON/JAIL POPULATION COST ESTIMATE STATEMENT

LEGISLATIVE RESEARCH COUNCIL

INITIATED MEASURE

RECEIVED

JUN 30 2017

S.D. SEC. OF STATE

AN INITIATED MEASURE TO LEGALIZE CERTAIN AMOUNTS OF MARIJUANA, DRUGS MADE FROM MARIJUANA, AND DRUG PARAPHERNALIA, AND TO REGULATE AND TAX MARIJUANA ESTABLISHMENTS.

This initiated measure creates a Class 1 misdemeanor for driving while under the influence of marijuana and a Class 6 felony for anyone, other than a registered cannabis product manufacturer, to perform solvent-based extractions using solvents other than water or vegetable glycerin. At the same time, the measure negates the laws of both the state and political subdivisions (cities, counties, etc.) that make it illegal to possess marijuana-related paraphernalia. It also negates the laws of any political subdivisions that make it illegal to possess, grow, use, process, purchase, transport, or distribute certain amounts of marijuana, including marijuana concentrates, for those age twenty-one and over. It does not appear to negate existing state laws against these activities.

To determine the impact of the two crimes created by this measure the Legislative Research Council (LRC) looked to the impact of similar laws in Colorado. While driving under the influence (DUI) of marijuana is already a crime under SDCL 32-23-1, the LRC looked to Colorado to see if South Dakota could expect an increased number of DUI convictions under this measure. Colorado legalized recreational marijuana in 2012. DUIs in Colorado have been steadily decreasing since 2007, even after the legalization of recreational marijuana use. Based on the lack of a statistical impact in Colorado, South Dakota should not expect to see increased convictions of DUIs under this measure.

In Colorado, it is a crime for anyone not licensed to knowingly manufacture marijuana concentrates using an inherently hazardous substance. Due to the lack of convictions under a substantially similar Colorado statute, South Dakota can likely expect a similar result under this measure. Based on Colorado's experience with DUI convictions and their lack of convictions for certain marijuana extractions, the effect of this measure is likely to have minimal increased impact on prison and jail populations and costs.

To determine any cost reductions of this measure, the LRC analyzed the conviction and sentencing statistics of current South Dakota marijuana laws.

The LRC then determined how many of those convictions would be avoided under the initiated measure. As required by law, the LRC did not consider the impact to state or local revenue, businesses, law enforcement expenses, societal costs, or any drug treatment or other social program costs, only how the measure would affect jail and prison populations. The LRC analyzed the following statutes that would be affected by the initiated measure:

SDCL 22-42A-3, the possession of drug paraphernalia, which is a Class 2 misdemeanor, punishable by up to thirty days in county jail and a \$500 fine;

SDCL 22-42-6, the possession of two ounces or less of marijuana, which is a Class 1 misdemeanor, punishable by up to one year in county jail and a \$2,000 fine;

SDCL 22-42-15, ingestion of marijuana, which is a Class 1 misdemeanor, punishable by up to one year in county jail and a \$2,000 fine;

SDCL 22-42-7, the distribution of one ounce or less of marijuana, which is a Class 6 felony, punishable by two years in prison and a \$4,000; and the distribution of less than one half ounce of marijuana, which is a Class 1 misdemeanor, punishable by one year in county jail and a \$2,000 fine; and

SDCL 22-42-10, keeping a place for the use or sale of a controlled substances, which is a Class 5 felony, punishable by five years in prison and a \$10,000.

Section 8 of this measure would decriminalize, under state law and local ordinances, the possession of paraphernalia associated with marijuana use. From 2011 to 2016 there were 2,163 convictions under SDCL 22-42A-3 for use or possession of drug paraphernalia. These convictions served approximately 8.5 days in jail. Because a charge under SDCL 22-42A-3 can be for paraphernalia associated with any illegal drug, the LRC analyzed convictions for possession of controlled substances against convictions for possession of marijuana to determine the likely percentage of paraphernalia charges for marijuana.

There were 6,069 convictions under SDCL 22-42-5, or possession of a controlled substance (excluding marijuana), from 2011 to 2016. During that same period, there were 10,818 convictions under SDCL 22-42-6 for possession of marijuana in any amount. The LRC used those statistics to determine that 64% of drug possession arrests during that time were for marijuana and 36% were for other controlled substances. Assuming 64% of the total 2,163 paraphernalia convictions were related to marijuana, it can be determined that 1,384 convictions were for marijuana paraphernalia. An average of 231 convictions per year would be avoided under this measure. With an average sentence of 8.5 days in jail at a cost of \$105.40 per day, this measure would reduce jail costs by \$206,953 per year, and \$2,069,529 over 10 years.

The remaining marijuana decriminalization provisions of this measure are found in Section 2. The language only decriminalizes marijuana under the laws of "any subdivision" (cities, counties, etc.). However, marijuana convictions in South Dakota are charged under state law. As a result, these provisions have no practical effect. Had Section 2 been written to apply to state law, as Section 8 was for marijuana paraphernalia, additional prison and jail cost reductions would have accrued.

In conclusion, there is likely no impact on state prison costs, nor is there any likely increase in jail costs. The total estimated reduction in jail costs is \$206,953 per year, and \$2,069,529 over 10 years.

Approved:  Date: 6/30/17

Director, Legislative Research Council

PRISON/JAIL POPULATION COST ESTIMATE STATEMENT

LEGISLATIVE RESEARCH COUNCIL


INITIATED MEASURE

AN INITIATED MEASURE TO LEGALIZE CERTAIN AMOUNTS OF MARIJUANA, DRUGS MADE FROM MARIJUANA, AND DRUG PARAPHERNALIA, AND TO REGULATE AND TAX MARIJUANA ESTABLISHMENTS.

To determine the prison and jail impact of this measure, the Legislative Research Council (LRC) researched and analyzed statistics from Colorado and the South Dakota criminal justice system. As required by law, the LRC did not consider the impact to state or local revenues, businesses, law enforcement expenses, societal costs, or any drug treatment or other social program costs, only how the measure would affect jail and prison populations. The LRC concluded that the following provisions would impact prison and jail costs by the following amounts:

New Class 1 Misdemeanor, Marijuana DUI	\$0	\$0	\$0	\$0
New Class 6 felony, certain solvent extractions	\$0	\$0	\$0	\$0
SDCL 22-42-6, marijuana possession, partial repeal*	\$0	\$0	\$0	\$0
SDCL 22-42A-3, drug paraphenalia, partial repeal	(\$206,953)	(\$2,069,529)	\$0	\$0
SDCL 22-42-15, marijuana injestion, repeal*	\$0	\$0	\$0	\$0
SDCL 22-42-7, marijuana distribution, partial repeal*	\$0	\$0	\$0	\$0
SDCL 22-42-10, drug facility, partial repeal*	\$0	\$0	\$0	\$0
Total Cost Change:	(\$206,953)	(\$2,069,529)	\$0	\$0

*The provision is written to apply only to local, not state law.

Approved:  Date: 6/30/17
Director, Legislative Research Council