

**MISSOURI STATE AUDITOR'S OFFICE  
FISCAL NOTE (20-070)**

**Subject**

Initiative petition from Mark Pedersen regarding a proposed constitutional amendment to Article XIV of the Constitution of Missouri. (Received June 12, 2019)

**Date**

July 2, 2019

**Description**

This proposal would amend Article XIV of the Constitution of Missouri.

The amendment is to be voted on in November 2020.

**Public comments and other input**

The State Auditor's office requested input from the **Attorney General's office**, the **Department of Agriculture**, the **Department of Economic Development**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education**, the **Department of Health and Senior Services**, the **Department of Insurance**, **Financial Institutions and Professional Registration**, the **Department of Mental Health**, the **Department of Natural Resources**, the **Department of Corrections**, the **Department of Labor and Industrial Relations**, the **Department of Revenue**, the **Department of Public Safety**, the **Department of Social Services**, the **Governor's office**, the **Missouri House of Representatives**, the **Department of Conservation**, the **Department of Transportation**, the **Office of Administration**, the **Office of State Courts Administrator**, the **Missouri Senate**, the **Secretary of State's office**, the **Office of the State Public Defender**, the **State Treasurer's office**, **Adair County**, **Boone County**, **Callaway County**, **Cass County**, **Clay County**, **Cole County**, **Greene County**, **Jackson County**, **Jasper County**, **St. Charles County**, **St. Louis County**, **Taney County**, the **City of Cape Girardeau**, the **City of Columbia**, the **City of Jefferson**, the **City of Joplin**, the **City of Kansas City**, the **City of Kirksville**, the **City of Mexico**, the **City of Raymore**, the **City of St. Joseph**, the **City of St. Louis**, the **City of Springfield**, the **City of Union**, the **City of Wentzville**, the **City of West Plains**, **Cape Girardeau 63 School District**, **Hannibal 60 School District**, **Malta Bend R-V School District**, **Mehlville School District**, **Wellsville-Middletown R-1 School District**, **State Technical College of Missouri**, **Metropolitan Community College**, **University of Missouri**, **St. Louis Community College**, **University of Central Missouri**, **Harris-Stowe State University**, **Lincoln University**, **Missouri State University**, **Missouri Southern State University**, **Missouri Western State University**, **Northwest Missouri State University**, **Southeast Missouri State University**, **Truman State University**, **Missouri Office of**

**Prosecution Services, the Kansas City Board of Police Commissioners, and the Metropolitan Police Department - City of St. Louis.**

**Assumptions**

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office can absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, their office may request additional appropriations.

Officials from the **Department of Agriculture** indicated no fiscal impact on their department.

Officials from the **Department of Economic Development** indicated no impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated this legislation does not impact their department.

Officials from the **Department of Higher Education** indicated the initiative petition has no impact on their department.

Officials from the **Department of Health and Senior Services** indicated the cost savings will be \$0 for fiscal year 2020, unknown to greater than or less than \$3,365,858 for fiscal year 2021, and unknown to greater than or less than \$5,458,381 for fiscal year 2022.

This proposal will affect the Missouri Veteran's Commission.

This could reduce new small business opportunities.

This proposed legislation repeals Section 1, Article XIV, Constitution of Missouri relating to medical marijuana for patients with serious illnesses and medical conditions and replaces it with legalized cannabis for personal or medical use. The current law stipulates the minimum number of facilities to be licensed, the application and operation fees associated with each type of facility, the type of qualifying cardholder, and the fee amount per card.

The total revenue received in fiscal year (FY) 2020 from application, licensing and certification fees is projected to be \$12,124,800. It is estimated that revenues from these sources will decrease by 50% in FY 2021 to \$6,062,400 and to unknown in FY 2022.

There will also be a decrease in revenue from the four percent sales tax no longer being collected on the retail sale of medical marijuana. There are no established sales trends on which sales for FY 2021 can be estimated, therefore the retail sales of medical marijuana in FY 2021 are unknown. The annual loss of tax revenue as a result is also unknown.

The total loss to state revenue will be an unknown amount greater than \$6,062,400 in FY 2021.

<https://www.statista.com/statistics/587017/medical-marijuana-user-monthly-expenditure-cannabis-products/>

### **Section 1, Article XIV, Constitution of Missouri**

This proposed legislation places on the ballot in November 2020 a proposed amendment to the Constitution that repeals Section 1, Article XIV, Constitution of Missouri relating to medical marijuana for patients with serious illnesses and medical conditions and replaces it with legalized cannabis for personal or medical use. The dictates of this initiative must be implemented no later than January 31, 2021. The Department of Health and Senior Services' (DHSS) assumes that the dictates in the initiative will be completed by December 31, 2020, and, as a result, six months of expenses will be avoided in FY 2021.

The proposed legislation would repeal the Department's authority and funding for its medical marijuana regulatory program. As a result, DHSS would no longer require and would be unable to support the 52 FTE and expenditures associated with administering the medical marijuana program. The avoidance of these expenditures, coupled with the unknown revenue receipts, will result in an unknown impact to the Missouri Veterans Health and Care Fund of unknown to greater than or less than \$3,365,858 for FY21.

In as much as both the revenue into and expenses from the Veteran's Health Fund are unknown, there could be an unknown balance in the Veteran's Health Fund when the proposed legislation goes into effect. It is unknown what the distribution of the fund balance would be.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** indicated this petition, if passed, will have no cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated their department would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated a fiscal impact of costs savings of \$157,175 in fiscal year 2021, \$778,038 in fiscal year 2022, \$1,328,713 in fiscal year 2027.

The estimate of the impact of this amendment is determined by a standard response of looking at persons committed for marijuana-only offenses. In 2018, thirty people were incarcerated and 383 given probationary terms of cannabis-only violations. The average

sentence is 7.0 years with 0.9 served before first release; the average probationary term is three years.

Passage of Initiative Petition (IP) 2020-070 is estimated to result in 30 fewer persons incarcerated and 383 fewer persons entering probationary supervision per year in their department. The full impact of the bill occurs in fiscal year (FY) 2026 with 90 fewer persons incarcerated and 1269 fewer persons on field supervision. This results in a reduction of 10 (Probation and Parole) P&P officers by FY2026. Their department cost of incarceration in \$17.224 per day or an annual cost of \$6,287 per offender. Their department cost of probation or parole is determined by the number of P&P Officer II positions that would be needed to cover the new caseload.

Officials from the **Department of Labor and Industrial Relations** indicated this initiative petition does not appear to have a fiscal impact on their department.

Officials from the **Department of Revenue** indicated IP 20-070 is a proposed constitutional amendment to Article XIV that will change to include recreational marijuana. They would like to point out that this is a fiscal estimate, and the numbers that were used were the newest numbers the Department could find when researching this issue. Also, with Illinois being the newest state to legalize recreational marijuana this year, this fiscal estimate could be much lower.

They would also like to point out this initiative petition has no legal buying age limit. Their fiscal analysis will be 21 years and older due to that has been the legal age of all the states that have legalized it thus far.

First, they would like to include the fiscal analysis of the 2018 constitutional amendment that regarding medical marijuana. This amendment passed. IP 20-070 will essentially change the market to recreational, which would be taxed at the state rate of 4.225%, and it will exempt medical marijuana from tax. This eliminates the money that was slated to go into the Veterans Health Fund, and the Show Me Health Access Fund. Below is the fiscal estimates given by their department for the medical marijuana amendment that passed last year. They will consider these to be a loss for the purposes of this fiscal note.

Fund	Tax Rate	FY 2021	FY 2027
Veterans Health Fund	0.04%	\$ 0.02	\$ 0.06
Show the Me Health Access Fund	0.12%	\$ 0.05	\$ 0.19
Unknown Fund	3.84%	\$ 1.57	\$ 6.11
<b>Total Excise Revenue</b>		\$ 1.64	\$ 6.36

(numbers in millions)

Current 2017 Data (<https://www.samhsa.gov/data/report/comparison-2015-2016-and-2016-2017-nsduh-population-percentages-50-states-and-district>) suggests that 14.73% of the US population surveyed participated in recreational marijuana use in the last year. That same study also suggests 13.95% of Missourians surveyed participated in recreational

marijuana use in the last year. The 2017 Census estimates for US population age 21+ is 234,116,784, and Missouri's 21+ is 4,435,966. They then multiplied the population number by the percentage number to get the number of marijuana users in the US and the State of Missouri. The US had an estimated 34,485,402 people that had participated in recreational marijuana use in the last year, and Missouri had an estimated 618,817 people that had participated in recreational marijuana use in the last year.

They then determined how many of those marijuana users would be part of the medical marijuana population. Here they utilized an article published by the St. Louis Post Dispatch regarding a study done by the state and numbers the marijuana association in Missouri uses on estimating those who will potentially be part of the medical marijuana population. They will assume for this fiscal note that an estimated 65,547 Missourians will be part of the medical marijuana population. This had to be determined due to this will be the amount that will be tax exempt per IP 20-070.

They determined the percentage of Missouri's market to the US market. This is done by dividing the number of people that participated in recreational marijuana use in Missouri by the number of people that participated in recreational marijuana use in the US. They estimated that Missouri's market percentage in the US minus medical is 1.60%. It is estimated that in 2021 the US marijuana market will total \$24.5 billion, and by 2027 it could be as much as \$47.3 billion. Using these numbers they estimate that in 2021 the Missouri market will be at \$393,068,383.

Using the Missouri marijuana market numbers, they estimate that the following:

<b>MO Sales</b>	<b>2021</b>	<b>2027</b>
General Revenue	\$ 11,792,051	\$ 22,765,879
Education	\$ 3,930,684	\$ 7,588,626
Conservation	\$ 491,335	\$ 948,578
Parks, soil, water	\$ 393,068	\$ 758,863
Total State Revenue (TSR)	\$ 16,607,139	\$ 32,061,946

Local Sales Tax	\$ 15,329,667	\$ 29,595,643
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\*Local Sales Tax was figured with an average sales tax rate of 3.9%.

TSR	\$ 16,607,139	\$ 32,061,946
Previous Medical Marijuana	\$ 1,640,000	\$ 6,360,000
<b>IP-20-070 Total Impact</b>	<b>\$ 14,767,139</b>	<b>\$ 25,701,946</b>

Officials from the **Department of Public Safety - Office of Director** indicated they see no fiscal impact due to this initiative petition. They also indicated they forwarded this to the Department of Public Safety - Alcohol and Tobacco Control (ATC) Division and ATC officials indicated they see no fiscal impact.

**Department of Public Safety - Division of Missouri State Highway Patrol** indicated:

The Patrol's Criminal Justice Information Services Division (CJIS) processes all requests for expungements for criminal history records, and the requests are processed by a CJIS Technician. This person reviews criminal history records, contacts agencies associated with the arrests or convictions, and collects all necessary data for court orders.

As of January 2017, there were 95,550 marijuana-related arrest charges in the Central Repository. The expungement process takes approximately 90 minutes, so 1 full-time employee (FTE) could handle 1,243 expungements per year.

- $1,864 \text{ hours (average work hours per year)} \times 60 \text{ minutes per hour} = 111,840 \text{ minutes per year.}$
- $111,840 \text{ minutes per year} / 90 \text{ minutes per expungement} = 1,243 \text{ expungements per year per FTE}$
- $95,550 \text{ records} / 1,243 \text{ per FTE per year} = 77 \text{ FTE}$

Additionally, the Patrol Records Division (PRD) processes all petitions and court orders relating to expungement of marijuana-related traffic arrests.

There are currently 113,922 traffic arrest records in the system. The expungement process takes approximately 30 minutes, so 1 FTE could handle 3,728 expungements per year.

- $111,840 \text{ minutes per year} / 30 \text{ minutes per expungement} = 3,728 \text{ expungements per year per FTE}$
- $113,922 \text{ records} / 3,728 \text{ per FTE per year} = 31 \text{ FTE}$

The Patrol would also need to replace all 10 of its canines. The Patrol's canines are currently trained using Cannabis/Marijuana as one of the drugs to which they alert. If this initiative were to pass, each canine would have to be retired and replaced. The purchase and initial training for a canine is approximately \$22,000. Since the Patrol contracts its canine training, the time to train all 10 canines could take up to 2 years.

As a result, the anticipated total initial cost to the Patrol will be **\$7,388,617**, as follows:

\$6,249,429	Salary and fringe benefits for 77 CJIS Technicians and 31 PRD Technicians
\$385,128	Expense and Equipment for the 108 FTE
\$534,060	Rental space, janitorial, utilities for the 108 FTE
\$220,000	Cost of replacing and training 10 canines
\$7,388,617	Total Cost

With the time involved in hiring and training FTE, processing expungements, and replacing canines, the Patrol anticipates this being a 2-year project, after which time the FTE would be terminated.

#### Missouri State Highway Patrol - Comments and Concerns:

In 2009, Colorado traffic fatalities involving drivers testing positive for marijuana represented 9% of the total traffic fatalities. Recreational marijuana use was legalized in 2012. By 2016, that number more than doubled to 21%.

Marijuana-related traffic deaths increased 66% in the four-year average (2013-2016) since Colorado legalized recreational marijuana compared to the four-year average (2009-2012) prior to legalization.

Marijuana-related deaths when a driver tested positive for marijuana more than doubled from 55 deaths in 2013 to 125 deaths in 2016.

The yearly number of marijuana related hospitalizations increased 72% after the legalization of marijuana, (2009-2012) vs. (2013-2016).

Colorado youth past month marijuana use for 2014/2015 was 55% higher than the national average.

The average THC (tetrahydrocannabinol) levels in marijuana has increased significantly over the years: 1969-0.8%, 1995-4%, 2013-13%; 2017-20+%; Oil, 1995-13%, 2013-52%; highest Plant 38%, highest oil 95%+.

In Missouri, medical marijuana was legalized by Amendment 2 and took effect December 2018. As of June 10, 2019, 12 states have legalized recreational marijuana and 29 states have legalized medical marijuana. In a roadside 2013-2014 NHTSA roadside survey, 20% of the nighttime and weekend drivers tested positive for drugs. Interestingly, the number of daytime drugged drivers was approximately the same amount as night and weekend drugged drivers. A roadside study in Colorado and Washington, the first two states to legalize marijuana for recreational use, showed the primary increase of marijuana users happened to their daytime drivers. The percent of drivers that tested positive for marijuana during the day went from 8%, before recreational marijuana sales, to 23%, 6-12 months after marijuana was legalized. There was a 48% increase in weekend nighttime drivers testing positive for THC or 11-OH-THC (an active metabolite of THC) from 2007 to 2014.

Montana legalized medical marijuana in 2004 and from 2007-2010, the presence of marijuana in DUI suspects increased over 100%. Also, the number of DUI suspects who tested positive for alcohol and marijuana increased by over 180%.

Medical marijuana has been legal in the state of Colorado since 2000. On November 12, 2012, the state of Colorado passed Amendment 64, which legalized private use of marijuana. Per the Colorado State Patrol's driving under the influence statistics, marijuana

DUI citations increased 25.5% from 2014 to 2018 and marijuana and alcohol citations increased 112% in the same time range. As marijuana becomes legalized, its use increases.

The three years after Colorado legalized marijuana for recreational use (2013-2015), its use increased in youth ages 12-17, by 12%, in young adults aged 18-25 by 16%, and adults 26 and older by 71%. By removing the recommended acceptable ages of use, zoning regulations, packaging, and advertising of cannabis/marijuana, the risk of use and abuse of marijuana by the youth of Missouri is substantially increased. This category of Missourians, who recent studies have shown significant long-term cognitive impairment when marijuana is ingested during the developmental years, would be affected (16)(b) of the initiative petition defines cannabis as including "any variety of Cannabis, including any derivative, concentrate, extract, flower...". The Patrol recommends this definition *not* include concentrates or extracts. Concentrates and extracts can reach THC concentrations into the 90%+ range. Naturally occurring cannabis plants typically contain 3-6% THC. Some cannabis cultivators have genetically manipulated the cannabis plant to produce high THC concentrations, up to 30%. There is little to no research done to show the short/long term health effects from such high THC concentrations.

(16)(e) defines cannabis accessories as "any equipment, products, or materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing or containing cannabis, or for ingesting, inhaling, vaporizing, smoking or otherwise introducing Cannabis into and/or onto the human body". The Patrol recommends "any equipment, products, or materials of any kind that are used, intended for use, or designed for use" be removed. Reading this definition, this could include combustible solvents that are commonly used to manipulate or extract cannabinoids from the cannabis plant. Solvents, such as butane, are unstable and commonly combust when not used properly or for their intended use.

(25)(g) states "No one shall be denied employment solely based on their use of cannabis". Per the National Institute on Drug Abuse, studies suggest there is a link between marijuana use and an increase risk of injury and accidents in the workplace. One study found employees who tested positive for marijuana, pre-employment, had 55% more accidents, 85% more injuries and 75% greater absenteeism, when compared to employees who did not test positive for marijuana. The Patrol recommends this be removed and employers still have the right to deny employment and put policies and procedures in place which prohibits their employees from cannabis use.

(25)(h) states "The use and/or possession of Cannabis shall in no way impede one's legal right to possess a firearm". The Patrol recommends this be completely removed from the proposal. Federal law, 18 U.S.C. 922(g)(3), prohibits any person who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Abuse Act (21 U.S.C. 802) from shipping, transporting, receiving or possession of firearms or ammunition. Marijuana is listed in the Controlled Substances Act as a Schedule 1 controlled substance, and there are no exceptions in Federal Law for marijuana purportedly used for medicinal purposes, even if such use is sanctioned by State Law.



The Medical section states "Medical Cannabis shall be available to patients without taxation who have a physician's recommendation...." The Patrol would like clarification of this statement. Does this remove the 4% tax on medical marijuana under Amendment 2?

The Patrol recommends a \$75 fee, similar to the criminal history background check fee, be implemented for the cost of researching and reviewing criminal histories, as well as contacting various agencies associated with arrests (in researching other states with similar expungement requirements, they all charge a fee to offset the cost of the time required to process the expungements - their fees ranged from \$50 to \$450 per petition per arrest date).

This initiative provides specific employment protections for those who use Cannabis/Marijuana. Such use while serving in any law enforcement related position not only creates public safety concerns, but also quality control and security issues when working with highly sensitive material or information. Additionally, the Patrol receives federal grant funding, subject to audits, that require a drug free workplace policy. For these reasons, the Patrol feels it is essential that it be allowed to continue administering drug testing for new employees, as well as random tests, critical incident tests, etc.

Additionally, the initiative does not contain any language concerning the amount of marijuana an individual may transport, purchase or sell. Also, there is no language as to where the marijuana may be transported. A lack of guidance may allow for Missouri marijuana facilities to distribute marijuana outside of the state, or allow other states to distribute their marijuana in Missouri. A lack of such language could lead to Missouri being a distribution starting point for states where marijuana remains illegal.

Finally, if passed, the initiative petition will remove Cannabis/Marijuana from Missouri Revised Statutes and create conflict with both Federal and State laws, such as the use or possession of a firearm. As the Patrol has officers assigned to federal task forces that may be involved in a federal drug operation, there are concerns over potential civil litigation resulting from these types of operations, as marijuana is still classified as a Schedule I controlled substance.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this initiative petition.

Officials from the **Governor's office** indicated there should be no added costs or savings to their office.

Officials from the **House of Representatives** indicated no fiscal impact to their office.

Officials from the **Department of Conservation** indicated that no adverse fiscal impact to their department would be expected as a result of this proposal.

Officials from the **Department of Transportation** indicated this initiative petition will have a negative impact on MoDOT and the MSHP/MoDOT Medical Plan.

Amendment 2 from 2018 allowed patients with qualifying medical conditions to use medical marijuana for treatment under the supervision of a physician. However, **consumption of medical marijuana in a public place and driving under the influence of marijuana are still illegal** and there is no criminal or civil immunity for **operating a vehicle, aircraft, dangerous device, or navigating a boat under the influence of marijuana**. Additionally, an employee cannot bring a claim for wrongful discharge, discrimination, or any similar cause of action or remedy based on an employer prohibiting the employee from being under the influence of marijuana while at work; or disciplining the employee for working or attempting to work while under the influence of marijuana. Amendment 2 from 2018 also included language regarding taxation and reporting as well as general regulation and oversight of medical marijuana. **Amendment 2 from 2018 also explicitly stated that nothing in the amendment shall be construed as mandating health insurance coverage of medical marijuana for qualifying patient use.**

Their understanding is that this initiative petition is amending the Missouri Constitution to remove all of the language that was added in 2018 with the passage of Amendment 2 and add language that significantly expands the legal use of marijuana to include both medical and personal use.

Their main concern is with "No one shall be denied employment solely based on their use of Cannabis." This initiative petition appears to **permit employees to work while under the influence of marijuana and would not allow an employer to terminate employment if the employee is under the influence of marijuana at work**. This presents **significant safety and productivity concerns for MoDOT**. Additionally, **MoDOT must comply with the Federal DOT regulations for safety-sensitive employees** which requires employees to be removed from their safety-sensitive duties if they test positive for marijuana on a drug test unless they complete the Return-to-Duty process outlined in the DOT regulations. MoDOT is not required to use this Return-to-Duty process. It may instead terminate employment upon receiving a verified positive drug test. In fact, due to the cost and difficulty of requiring the Return-to-Duty process MoDOT encountered in the past, MoDOT's policy now requires termination of employment for a positive drug test for marijuana. Furthermore, the **Federal Drug-Free Workplace Act explicitly requires policies prohibiting the unlawful use, possession, or distribution of any Schedule I controlled substance for employees performing work in connection with a Federal grant or contract**.

Another concern is that Amendment 2 from 2018 explicitly stated that nothing in the amendment shall be construed as mandating health insurance coverage of medical marijuana for qualifying patient use. This language is not included in this initiative petition. In fact, **language has been added to state that "all patients engaged in Cannabis therapy shall be afforded the same rights and privileges afforded to any patient treated through conventional therapeutic means, whether or not under the care of a physician**. Therefore, there may be an argument that the MSHP/MoDOT medical plan must cover medical marijuana use. This would have a negative fiscal impact on the MSHP/MoDOT Medical Plan.

Furthermore, the initiative petition specifically states that "Cannabis shall no longer be considered a controlled substance or a drug..." The added language also states that the use and/or possession of Cannabis shall not be grounds for issuing a DUI stop, charge, arrest or fine when operating or a passenger of a motor vehicle. This presents **significant safety concerns for the traveling public**, which conflicts with MoDOT's mission.

In sum, this initiative petition would have negative impacts far beyond fiscal loss via the medical plan due to highway safety and federal compliance issues.

The federal compliance realm is unknown to them, and the federal government could sanction Missouri's highway funds. This is from their 2018 response to several initiative petitions:

Changes to Missouri's state driving laws could impact some federal commercial drivers' license laws.

Failure to comply with 49 C.F.R. 384.225 and 384.226 could result in a withholding of Missouri's federal-aid highway funds apportioned to it under each of Title 23, United States Code (U.S.C.), sections 104(b)(1), (b)(3), and (b)(4). The federal funds impacted consist of national highway performance program funds, highway safety improvement program funds, and congestion mitigation and air quality improvement funds. The withholding amount would be four percent for the first year of non-compliance and eight percent for the second and subsequent years.

This still holds true because they simply cannot say with certainty how the federal government would react, as they generally only acts in a reactive manner to legislation.

Officials from the **Office of Administration** this proposal amends Article XIV, Section 1 of the Missouri Constitution by repealing all of the medical marijuana language that was voter approved in November 2018 and replacing it with language for recreational marijuana.

**Section 1.1** states that cannabis shall immediately be removed from the Missouri Revised Statutes list of controlled substances. **Section 1.6** requires, upon passage of the act, the immediate release of all persons incarcerated or under Probation and Parole supervision for non-violent cannabis-only offenses as well as expungement of their records pertaining to these offenses within 60 days. The Office of Administration, Division of Budget and Planning (B&P) defers to the Department of Corrections for the estimated impact from this provision.

**Section 1.4** states that medical cannabis shall be available to patients without taxation as long as a patient has a physician's recommendation. B&P notes that it is unclear if the term "recommendation" refers to a medical prescription or simply a suggestion. B&P further notes that if "recommendation" is interpreted to mean anything other than prescription, potential subsequent sales and/or excise tax revenues to the state could be significantly

negatively impacted. B&P also notes that this proposal does not include any regulatory framework or specify any agency responsible for enforcement of medical marijuana sales.

B&P notes that no specific tax levy is included within this proposal. Therefore, B&P assumes that only current state and local sales taxes would be applied to the sale of non-medical cannabis. This would eliminate the 4% tax on medical marijuana sales that under current law is dedicated to the Missouri Veterans' Health and Care Fund.

B&P further notes that this proposal does not specify the age individuals must be to purchase cannabis. For the purpose of this fiscal note, B&P assumes that an individual must be at least 18 years old; however, as written, it appears that minors could also purchase cannabis. A change in the age assumption could change the estimated fiscal note impacts shown below.

Based on research, B&P was able to find forecasts for the U.S. legal market for cannabis<sup>1</sup>. According to such forecasts, the U.S. market for legal marijuana will be approximately \$24.5 billion in calendar year 2021 and grow up to \$47.3 billion by calendar year 2027. Based on information from the Substance Abuse and Mental Health Services Administration<sup>2</sup>, from 2016-2017 approximately 13.95% of Missouri residents and 14.73% of all U.S. residents surveyed have used marijuana within the last year. Using the populations of Missouri residents age 18 and over compared to the U.S. population age 18 and over, B&P estimates that the market for legal marijuana in Missouri is 1.79% of the total U.S. market. Therefore, B&P estimates that the Missouri market for legal marijuana would be approximately \$439.5 million in calendar year 2021 (\$24.5 billion x 1.79%) and up to \$848.4 million by calendar year 2027 (\$47.3 billion x 1.79%).

Based on further research<sup>3</sup>, B&P estimates that there could be between 61,700 to 122,500 medical marijuana users in Missouri. Using these estimates, and the estimates shown above, B&P estimates that the Missouri market for medical marijuana would be between 0.17% and 0.34% of the total U.S. Market for legal marijuana. Therefore, B&P estimates that the total Missouri market for recreational marijuana would be 1.46% to 1.62% of the total U.S. market. Table 1 shows the estimated U.S. and Missouri markets for marijuana.

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<sup>1</sup> <https://cannabusinessplans.com/cannabis-legal-market-size-projections/>

<sup>2</sup> <https://www.samhsa.gov/data/report/comparison-2015-2016-and-2016-2017-nsduh-population-percentages-50-states-and-district>

<sup>3</sup> [https://www.stltoday.com/news/local/metro/plenty-of-pot-study-says-missouri-will-license-twice-as/article\\_e94469b0-e1c6-5893-bc2e-e1d7b24f4a73.html](https://www.stltoday.com/news/local/metro/plenty-of-pot-study-says-missouri-will-license-twice-as/article_e94469b0-e1c6-5893-bc2e-e1d7b24f4a73.html)

Table 1: Estimated Marijuana Market Size for the U.S. and Missouri

Calendar Year	Estimated U.S. Market Size	Estimated MO Market Size	Estimated MO Medical Market Size	Estimated MO Recreational Market Size
2021	\$24,500,000,000	\$439,465,251	\$41,480,436	\$ 397,984,815
2022	\$28,300,000,000	\$507,627,209	\$61,066,553	\$ 446,560,656
2023	\$32,100,000,000	\$575,789,166	\$80,652,669	\$ 495,136,497
2024	\$35,900,000,000	\$643,951,123	\$100,238,785	\$ 543,712,338
2025	\$39,700,000,000	\$712,113,081	\$119,824,901	\$ 592,288,179
2026	\$43,500,000,000	\$780,275,038	\$139,411,018	\$ 640,864,020
2027	\$47,300,000,000	\$848,436,996	\$158,997,134	\$ 689,439,861

Based on the estimates for the medical marijuana market, B&P estimates that the Missouri Veterans' Health and Care Fund would lose (\$1.6 million) in funding during calendar year 2021. By calendar year 2027, the Fund would lose up to (\$6.4 million).

Applying the state sales tax rate of 4.225% and excluding the estimated market for medical marijuana B&P estimates that this proposal may increase state revenues by \$15.2 million in calendar year 2021. By calendar year 2027, B&P estimates that this proposal may increase state revenues by \$22.8 million. This proposal could also increase local revenues by \$15.4 million in calendar year 2021 and \$26.6 million by calendar year 2027. Table 2 shows the estimated revenues generated by calendar year.

Table 2: Sales Tax Collections by Calendar Year

Fund	CY 2021	CY 2022	CY 2023	CY 2024	CY 2025	CY 2026	CY 2027
GR (3.0% tax)	\$11,939,544	\$13,396,820	\$14,854,095	\$16,311,370	\$17,768,645	\$19,225,921	\$20,683,196
Education (1.0% tax)	\$3,979,848	\$4,465,607	\$4,951,365	\$5,437,123	\$5,922,882	\$6,408,640	\$6,894,399
Conservation (0.125% tax)	\$497,481	\$558,201	\$618,921	\$679,640	\$740,360	\$801,080	\$861,800
Parks, soil, water (0.1% tax)	\$397,985	\$446,561	\$495,136	\$543,712	\$592,288	\$640,864	\$689,440
Veterans' Health and Care Fund (4.0% tax)	(\$1,659,217)	(\$2,442,662)	(\$3,226,107)	(\$4,009,551)	(\$4,792,996)	(\$5,576,441)	(\$6,359,885)
TSR (total 4.225% state sales tax)	\$15,155,641	\$16,424,526	\$17,693,410	\$18,962,295	\$20,231,180	\$21,500,064	\$22,768,949
Local Revenue (pop. weighted local rate 3.86%)	\$15,362,214	\$17,237,241	\$19,112,269	\$20,987,296	\$22,862,324	\$24,737,351	\$26,612,379

However, B&P notes that if voter approved in November 2020, this proposal would not be enacted until January 1, 2021 which is halfway through FY 2021. Based on historical sales tax collection data, B&P adjusts calendar year collections 50% into the first fiscal year and 50% into the second fiscal year. Therefore, B&P estimates that this proposal will increase

state revenues by \$7.6 million in FY 2021. BY FY 2028, this proposal may increase state revenues by \$22.8 million. This proposal may also increase local revenues by \$7.7 million in FY 2021 and up to \$26.6 million by FY 2028. Table 3 shows the estimated revenue generated by fiscal year.

Table 3: Sales Tax Collections by Fiscal Year

Fund	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
GR	\$5,969,772	\$12,668,182	\$14,125,457	\$15,582,733	\$17,040,008	\$18,497,283	\$19,954,558	\$20,683,196
Education	\$1,989,924	\$4,222,727	\$4,708,486	\$5,194,244	\$5,680,003	\$6,165,761	\$6,651,519	\$6,894,399
Conservation	\$248,741	\$527,841	\$588,561	\$649,281	\$710,000	\$770,720	\$831,440	\$861,800
Parks, soil, water	\$198,992	\$422,273	\$470,849	\$519,424	\$568,000	\$616,576	\$665,152	\$689,440
Veterans' Health & Care Fund	(\$829,609)	(\$2,050,940)	(\$2,834,384)	(\$3,617,829)	(\$4,401,274)	(\$5,184,718)	(\$5,968,163)	(\$6,359,885)
TSR	\$7,577,820	\$15,790,083	\$17,058,968	\$18,327,853	\$19,596,737	\$20,865,622	\$22,134,506	\$22,768,949
Local Revenue	\$7,681,107	\$16,299,728	\$18,174,755	\$20,049,783	\$21,924,810	\$23,799,837	\$25,674,865	\$26,612,379

B&P notes that due to the bill's lack of clarity concerning what constitutes a medical marijuana exemption and the age required to purchase, these estimates may be different from actual collections.

**Section 1.5** states that cannabis farmers, manufacturers, and distributors shall not be subject to special zoning or license fees that are contrary to any other commercial or agriculture business. B&P notes that under Amendment 2 (which this language is replacing) medical marijuana facilities are subject to various license and renewal fees. B&P defers to the Department of Health and Senior Services for the potential lost revenue from the removal of the current language.

**Section 1.8** states that all provisions of Section 1 shall supersede conflicting city, county, state or federal statutory, local charter, ordinance, or resolution. B&P notes that state law may not supersede federal law.

Officials from the **Office of State Courts Administrator** indicated the initiative petition proposes a constitutional amendment to Article XIV to modify the current provisions of the Missouri Constitution relating to legalization of marijuana.

The average of all marijuana related charge codes from 2012 to 2016 for Circuit case types is 11,537 per year. The average of all marijuana related charge codes from 2012 to 2016 for Associate case types is 8,765. They are unable to determine what number of these charges were for someone over the age of twenty-one.

The following Criminal Court Costs would be affected by this proposed legislation:

<b>Criminal Court Costs</b>		
<b>Felony Case Costs</b>	<b>Amount of Cost</b>	<b>Disburse to State/County</b>
Basic Civil Legal Services Fund surcharge	\$10.00	State of Missouri - Basic Civil Legal Services Fund
Clerk Fee	\$45.00	State of Missouri - General Revenue \$36, County \$9
County Fee	\$75.00	County
Court Automation Fund Fee	\$7.00	State of Missouri -Statewide Court Automation Fund
Court Reporter fee (All Circuit Division Cases)	\$15.00	State of Missouri - General Revenue
Crime Victims' Compensation Fund surcharge	\$7.50	State of Missouri - Crime Victims' Compensation Fund
DNA Profiling Analysis Fund surcharge	\$30.00	State of Missouri - DNA Profiling Analysis Fund
Brain Injury Fund surcharge	\$2.00	State of Missouri - Head Injury Fund
Independent Living Center Fund surcharge	\$1.00	State of Missouri - Independent Living Center Fund
Motorcycle Safety Trust Fund surcharge	\$1.00	State of Missouri - Motorcycle Safety Trust Fund
Peace Officer Standards & Training (POST) Commission surcharge	\$1.00	State of Missouri - Peace Officer Standards & Training Fund
Prosecuting Attorney and Circuit Attorneys' Retirement Fund	\$4.00	Pros. Attorney Retirement Fund
Prosecuting Attorney Training Fund surcharge	\$1.00	State of Missouri - Prosecuting Attorney Training Fund
Sheriffs' Fee	\$75.00	County
Sheriffs' Retirement Fund surcharge (except 21st Circuit)	\$3.00	Sheriffs' Retirement Fund
Spinal Cord Injury Fund surcharge	<u>\$2.00</u>	State of Missouri - Spinal Cord Injury Fund
<b>Total</b>	<b>\$279.50</b>	
<b>Misdemeanor Case Costs</b>		

Basic Civil Legal Services Fund surcharge	\$8.00	State of Missouri - Basic Civil Legal Services Fund
Clerk Fee	\$15.00	\$12 State of Missouri / \$3 County
County Fee	\$25.00	County
Court Automation Fund Fee	\$7.00	State of Missouri - Court Automation Fund
Crime Victims' Compensation Fund surcharge	\$7.50	State of Missouri - Crime Victims' Compensation Fund
DNA Profiling Analysis Fund surcharge	\$15.00	State of Missouri - DNA Profiling Analysis Fund
Brain Injury Fund surcharge	\$2.00	State of Missouri - Brain Injury Fund
Independent Living Center Fund surcharge	\$1.00	State of Missouri - Independent Living Center Fund
Motorcycle Safety Trust Fund surcharge	\$1.00	State of Missouri - Motorcycle Safety Trust Fund
Peace Officer Standards and Training (POST) Commission surcharge	\$1.00	State of Missouri - Peace Officer Standards & Training Fund
Prosecuting Attorney and Circuit Attorneys' Retirement Fund	\$4.00	Pros. Attorney Retirement Fund
Prosecuting Attorney Training Fund surcharge	\$1.00	\$0.50 State of Missouri / \$0.50 County
Sheriffs' fee	\$10.00	County
Sheriffs' Retirement Fund surcharge (except 21st Circuit)	\$3.00	Sheriffs' Retirement fund
Spinal Cord Injury Fund Surcharge	\$2.00	State of Missouri - Spinal Cord Injury Fund
<b>Total</b>	<b>\$102.50</b>	
<b>Municipal Case (Filed in Associate Division) Costs</b>		
Clerk Fee	\$15.00	\$12 State of Missouri / \$3 County
Court Automation Fund Fee	\$7.00	State of Missouri - Court Automation Fund
Crime Victims' Compensation Fund surcharge	\$7.50	State of Missouri - Crime Victims' Compensation Fund
Peace Officer Standards and Training (POST) Commission surcharge	\$1.00	State of Missouri - Peace Officer Standards & Training Fund



Sheriffs' Retirement Fund surcharge	\$3.00	Sheriffs' Retirement Fund
<b>Total</b>	<b>\$33.50</b>	
<b>Criminal Costs Not Included Above</b>		
Drug Testing by a State Lab	\$150.00	State of Missouri
Drug Testing by a Private Lab	Actual Costs	County Reimbursement
Law Enforcement Arrest Costs:		
Highway Patrol		Amt. Approved by the Court
Local (County)		Amt. Approved by the Court
Municipal		Amt. Approved by the Court

The decrease in the court fees, depending on the number of cases, will result in an unknown loss to the courts.

They also assume there will be an unknown decrease in caseload for the courts because the courts will no longer process these cases; however, at this time they are unable to calculate the decrease.

Any significant increase or decrease will be reflected in future budget requests.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be \$7.8 million based on the cost of the 2016 Presidential Preference Primary.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In FY (fiscal year) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

In FY19, over \$5.8 million was spent to publish the full text of the measures for the August and November elections. They estimate \$65,000 per page for the costs of publications based on the actual cost incurred for the one referendum that was on the August 2018 ballot.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated if passed, this constitutional amendment would have a positive impact on the workload of the Missouri State Public Defender (MSPD), since possession, manufacture, distribution, etc. of cannabis would no longer be unlawful, offenses that the Public Defender currently uses resources to defend and no longer would need to.

The exact positive impact is difficult to predict because they track their cases by statutory offense and most drug offenses are not limited to marijuana.

However, their best estimate, using FY2018 MSPD data, is that this would reduce their caseload by 4,046 cases (149 A/B felonies, 2,911 C/D felonies, and 986 probation violations).

In *The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards*, prepared by RubinBrown on behalf of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants, the relevant workload standards are: A/B felonies, 47.6 hours per case; C/D felonies, 25.0 hours per case; and probation violations, 9.8 hours per case). (The workload standards include only case related tasks over which an attorney has some control (they exclude, for example, in court and travel time) and thereby reflect a conservative estimate.)

Applying those workload standards to the 4,046 cases, those cases require 89,530 attorney hours. With 2,080 hours per attorney available each year, that represents the work of 43 attorneys.

While in theory they might also handle fewer appeals of guilty verdicts after trial, the fact is that only a very small percentage of their cases proceed to trial and it's likely that only a small percentage of those cases are appeals from marijuana convictions. Therefore this minimal positive impact is not being taken into account in this estimate.

However, the Missouri State Public Defender already is significantly understaffed by 289 attorneys under the workload standards developed in *The Missouri Project*. (The 289 attorneys is a conservative estimate of the under-staffing in that it assumes they contract all conflicts to private attorneys, which they are not able to do for budgetary reasons).

Therefore, despite the positive impact on the workload of the Missouri State Public Defender, because they are already understaffed that savings in attorney time would not allow the Public Defender to reduce its workforce and therefore would not translate into an actual cost savings. However it does reduce by the cost of 43 attorneys how much money needs to be added to their budget in order to meet *The Missouri Project's* workload standards.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office.

Officials from **Greene County** indicated there is anticipated costs to the County of Greene for this initiative petition, per the following information concerning this initiative petition.: <https://static1.squarespace.com/static/5541a76ae4b0175cee8827d0/t/580684e5ff7c50adea98399e/1476822252561/Letter+to+CA+from+Denver+DA.jpg> provided by their County Prosecutor, Dan Patterson.

To fully understand the fiscal impact would require a very detailed study to give the best opportunity to understand the impact to law enforcement, prosecutors and the circuit courts within the proposed changes of this initiative petition, which the attached letter demonstrates occurred in Colorado after similar legislation passed.

County Prosecutor, Dan Patterson provided the following information:



# DenverDA

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October 12, 2016

## No on 64 Campaign and SAM Action

California voters are being told that they will see the crime rate go down if they vote to legalize marijuana commercially; this has not been the case in the state of Colorado or the city of Denver. Since the legalization of recreational marijuana in Colorado in 2013 traffic related marijuana deaths have increased 48%, marijuana related emergency room visits have increased 49%, and marijuana related calls to the poison center have increased 100%. According to the Colorado Bureau of Investigations in 2015 statewide homicides in Colorado rose 14.7 % over the previous year. Pueblo, Colorado had the highest homicide rate in the state with 11.1 killings per 100,000 residents. Aurora, Colorado's homicide rate more than doubled from 2014. Additionally more places in Colorado were robbed and more thefts occurred, especially cars, as 193,115 motor vehicles were reported stolen, up 27.7 % in 2015 from the previous year. In 2015, sexual assaults rose 10% in Colorado with Denver, Aurora, Lakewood, Westminster and Pueblo all reporting higher numbers as well.

In the city of Denver since the legalization of recreational marijuana the number of crimes in Denver has grown by about 44 %, according to annual figures the city reported to the National Incident Based Reporting System. In 2015 in Denver alone crime rose in every neighborhood in the city. The murder rate hit a decade high, 1059 more cars were broken into, there were 903 more auto thefts, 321 more aggravated assaults and 231 more homes were broken into compared to 2014.

California voters are also being told that legalizing recreational marijuana will free up law enforcement to work on other criminal activities. Again that has not been the case in Denver. Besides the overall increases in crime we have experience, the Denver police department is dealing with a 900% increase in the unlawful cultivation and manufacture of marijuana concentrate, and a 99% increase in the unlawful distribution of marijuana and marijuana concentrate. The quantity of illegal marijuana seized by the Denver police has increased 3,424% on average per case. The volume of marijuana seized per case has increased from an average of 162 pounds to 5724 pounds. In Denver unlawful public consumption of marijuana citations has increased over 300% per year since the legalization of recreational marijuana. The Denver police department is busier enforcing marijuana laws and investigating crimes directly related to marijuana, including murderers, robberies, and home invasions, than any other time in the history of the city.

Sincerely,

Mitchell R. Morrissey  
Denver District Attorney

Officials from the **City of Kansas City** indicated this initiative petition may have a fiscal impact on their city (because it makes medical cannabis available without taxation) in an unknown amount because they have no current sales for which to extrapolate a forecast. Some sort of business license fee could still be collected, but they likewise cannot forecast the impact (positive or negative).

The State Auditor's office did not receive a response from the **Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St. Joseph, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri, St. Louis Community College, University of Central Missouri, Harris-Stowe State University, Lincoln University, Missouri State University, Missouri Southern State University, Missouri Western State University, Northwest Missouri State University, Southeast Missouri State University, Truman State University, Missouri Office of Prosecution Services, the Kansas City Board of Police Commissioners, and the Metropolitan Police Department - City of St. Louis.**

### **Fiscal Note Summary**

State governmental entities expect increased revenues of at least \$10.7 million annually and savings of at least \$6.8 million annually by 2027. Local governmental entities are expected to have revenue increases of at least \$26.6 million annually by 2027 and are expected to have cost increases of an unknown amount.