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SENATE BILL NO. 128

Offered January 12, 2000

A *BILL to amend and reenact §§ 18.2-250 and 18.2-250.1 of the Code of Virginia, relating to possession of controlled substances; penalty.*

Patron—Norment

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 18.2-250 and 18.2-250.1 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-250. Possession of controlled substances unlawful.

A. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.).

Upon the prosecution of a person for a violation of this section, ownership or occupancy of premises or vehicle upon or in which a controlled substance was found shall not create a presumption that such person either knowingly or intentionally possessed such controlled substance.

(a) ~~Any~~ Except as provided in subsection a1, any person who violates this section with respect to any controlled substance classified in Schedule I or II of the Drug Control Act shall be guilty of a Class 5 felony.

(a1) Any person who violates this section by possessing any of the following controlled substances in the stated quantities shall be punished by imprisonment for not less than twenty years nor more than life, twenty years of which shall be a minimum, mandatory term of imprisonment which shall not be suspended in whole or in part and shall be served consecutively with any other sentence:

1. One kilogram or more of a mixture or substance containing a detectable amount of heroin;

2. Ten kilograms or more of a mixture or substance containing a detectable amount of:

a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

c. Ecgonine, its derivatives, their salts, isomers, or salts of isomers; or

d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions a through c hereof; or

3. One kilogram or more of a mixture or substance described in subdivision 2 that contains cocaine base.

4. 100 grams or more of methamphetamine, its salts, isomers, or salts of isomers or one kilogram or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of isomers.

(b) Any person other than an inmate of a penal institution as defined in § 53.1-1 or in the custody of an employee thereof, who violates this section with respect to a controlled substance classified in Schedule III, shall be guilty of a Class 1 misdemeanor.

(b1) Violation of this section with respect to a controlled substance classified in Schedule IV shall be punishable as a Class 2 misdemeanor.

(b2) Violation of this section with respect to a controlled substance classified in Schedule V shall be punishable as a Class 3 misdemeanor.

(c) Violation of this section with respect to a controlled substance classified in Schedule VI shall be punishable as a Class 4 misdemeanor.

B. The provisions of this section shall not apply to members of state, federal, county, city or town law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as handlers of dogs trained in the detection of controlled substances when possession of a controlled substance or substances is necessary in the performance of their duties.

§ 18.2-250.1. Possession of marijuana unlawful.

A. It is unlawful for any person knowingly or intentionally to possess marijuana unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.).

Upon the prosecution of a person for violation of this section, ownership or occupancy of the premises or vehicle upon or in which marijuana was found shall not create a presumption that such

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60 person either knowingly or intentionally possessed such marijuana.

61 Any person who violates this section shall be guilty of a misdemeanor, and be confined in jail not
62 more than thirty days and a fine of not more than \$500, either or both; any person, upon a second or
63 subsequent conviction of a violation of this section, shall be guilty of a Class 1 misdemeanor. *However,*
64 *any person who violates this section by possession of (i) twenty kilograms or more of a mixture or*
65 *substance containing a detectable amount of marijuana or (ii) 500 or more marijuana plants, regardless*
66 *of weight, shall be punished by imprisonment for not less than twenty years nor more than life, twenty*
67 *years of which shall be a minimum, mandatory term of imprisonment which shall not be suspended in*
68 *whole or in part and shall be served consecutively with any other sentence.*

69 B. The provisions of this section shall not apply to members of state, federal, county, city or town
70 law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as
71 handlers of dogs trained in the detection of controlled substances when possession of marijuana is
72 necessary for the performance of their duties.

73 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
74 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
75 **is \$511,200 in FY 2009.**