



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 974

(Patron – Guzman)

LD#: 18103676

Date: 1/10/2018

Topic: Possession or distribution of marijuana for medical purposes

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$50,000\*
- **Local Adult Correctional Facilities:**  
Cannot be determined
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Direct Care:**  
Cannot be determined\*\*
- **Juvenile Detention Facilities:**  
Cannot be determined \*\*

\*\* Provided by Department of Juvenile Justice

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 836 of the 2017 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

The proposal amends §§ 18.2-250.1, 18.2-251.1, 18.2-258.1, 54.1-3408.3, and 54.1-3442.5 through 54.1-3442.8 of the *Code of Virginia* relating to possession and distribution of marijuana for medical purposes. Under the proposal, § 54.1-3408.3 would be restructured to specify “marijuana” for the treatment of certain medical conditions, instead of “cannabidiol oil” and “THC-A oil.” In addition, this section would be amended to specify that a practitioner may issue a written certification for the use of marijuana for the treatment of any medical condition deemed terminal or debilitating by a licensed health care professional, pain management, cancer, glaucoma, intractable epilepsy, human immunodeficiency virus, osteoporosis, or arthritis. The other affected statutes would be amended to reflect these changes.

The 2017 General Assembly amended § 54.1-3408.3 to specify that a practitioner who issues a written certification to a patient for the use of cannabidiol oil or THC-A oil shall register with the Board of Medicine, and that the Board shall promulgate regulations to implement the registration process. The 2017 General Assembly also added §§ 54.1-3442.5 through 54.1-3442.8 to regulate the permitting of pharmaceutical processors to produce and dispense cannabidiol oil and THC-A oil.

Under current *Code*, § 18.2-251.1 specifies that marijuana may be possessed lawfully if it was obtained through a valid prescription. In addition, the existing misdemeanor and felony penalties associated with distributing marijuana do not apply to medical doctors and pharmacists who distribute marijuana for medical purposes pursuant to a valid prescription; however, a physician may lose his or her license for prescribing a Schedule I drug, such as marijuana. Possession of marijuana in violation of § 18.2-250.1 is a misdemeanor punishable by up to 30 days for the first offense and up to 12 months for a second or subsequent offense. The penalty for distribution of marijuana can range from a Class 1 misdemeanor to a

felony punishable by life imprisonment, depending upon the quantity of the drug, circumstances of the case, and the offender's prior record. Additionally, per § 18.2-258.1, it is a Class 6 felony: 1) to obtain a controlled substance by fraud, deceit, forgery, false name, etc., 2) to furnish false information in a prescription or other records, 3) to use a fictitious, suspended or revoked medical license number or one issued to another person, 4) to falsely represent oneself as a doctor or other medical professional, 5) to make or utter a false or forged prescription, or 6) to affix a false or forged label to a receptacle containing any controlled substance. However, the court has the authority to place certain defendants charged under § 18.2-258.1 on probation and, if the defendant fulfills all terms and conditions, the court will find him or her guilty of a Class 1 misdemeanor instead of the Class 6 felony.

As of September 14, 2017, 21 states had passed medical marijuana laws allowing for limited use for medical purposes, while eight additional states had legalized marijuana for medical and recreational use.<sup>1</sup>

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### **Analysis:**

According to General District Court Case Management System (CMS) data for fiscal year (FY) 2016 and FY2017, a misdemeanor conviction under § 18.2-250.1 for simple possession of marijuana was the primary, or most serious, offense in 22,320 cases. The majority of these offenders (86.5%) did not receive an active term of incarceration to serve after sentencing. The remaining 13.5% received a local-responsible (jail) term, with a median sentence of 10 days. Existing data sources do not contain sufficient detail to estimate the number of offenders who might be able to obtain a written certification for medical marijuana if the proposal were enacted.

Sentencing Guidelines data for FY2016 and FY2017 indicate that 412 individuals were convicted of a Class 6 felony for prescription fraud, etc., under § 18.2-258.1 (the prescription fraud was the primary offense in these cases). The majority (67.0%) of these offenders did not receive an active term of incarceration to serve after sentencing. Approximately one-fourth (26.0%) of the offenders were given a local-responsible (jail) term, for which the median sentence was three months. The remaining 7.0% received a state-responsible (prison) term with a median sentence of approximately 1.3 years.

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### **Impact of Proposed Legislation:**

**State adult correctional facilities.** By expanding the applicability of existing Class 6 felony offenses for prescription fraud, etc., to include acts involving medical certifications for marijuana, the proposal may result in additional felony convictions. In this way, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing data do not provide sufficient detail to estimate the number of new felony convictions that could result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be quantified.

**Local adult correctional facilities.** Expanding the applicability of felony offenses relating to prescription fraud may also increase local-responsible (jail) bed space needs. However, the portions of the proposal that would allow for the lawful possession and distribution of marijuana in certain cases may decrease jail bed space needs. Since the number of cases that may be affected cannot be determined, the net impact on local-responsible bed space needs cannot be quantified.

**Adult community corrections programs.** Because the proposal could result in additional convictions with supervision requirements for the offenders, the proposal may have an impact on state adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on state community corrections cannot be determined.

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<sup>1</sup> Governing Magazine. State Marijuana Laws in 2017 Map. Available at <http://www.governing.com/gov-data/state-marijuana-laws-map-medical-recreational.html> (accessed November 6, 2017)

**Virginia's sentencing guidelines.** Felony convictions under § 18.2-258.1 are covered by the sentencing guidelines. No adjustment to the guidelines is necessary under the proposal.

**Juvenile direct care.** According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 836 of the 2017 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.**

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

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