



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2294

(Patron – Kilgore)

LD#: 23101465

Date: 12/07/2022

Topic: Definition of marijuana

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 the 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 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

Summary of Proposed Legislation:

The proposal modifies the definition of "marijuana" in several *Code* sections to include any substance containing 1) a total tetrahydrocannabinol (THC) concentration that exceeds 0.3 percent or 2) more than one milligram of THC per 100 grams of total product weight, while excluding specified hemp products. The bill defines "tetrahydrocannabinol" to include any naturally occurring or synthetic tetrahydrocannabinol, including its salts, isomers, or salts of isomers, and removes references in the *Code* to delta-9 tetrahydrocannabinol. The bill directs the Board of Agriculture and Consumer Services to adopt regulations that require hemp products not intended for human consumption to include a bittering agent that renders the products unpalatable. The bill creates a \$5,000 civil penalty for persons that willfully commit a second or subsequent violation of certain provisions of the Virginia Consumer Protection Act related to products containing tetrahydrocannabinol.

The 2021 General Assembly (Special Session I) adopted legislation to establish a licensing and regulation system for cannabis cultivation facilities, cannabis manufacturing facilities, cannabis testing facilities, and retail cannabis stores, along with penalties for violation of the requirements, effective July 1, 2024. The legislation also legalized simple possession of an ounce or less of marijuana by persons who are at least 21 years of age and provided that persons 21 years of age or older may cultivate up to four marijuana plants at home for personal use. Possession of more than one ounce but less than four ounces of marijuana on one's person or in a public place is subject to a civil penalty of up to \$25. Possession of four ounces but not more than one pound of marijuana is a Class 3 misdemeanor or, for a second or subsequent offense, a Class 2 misdemeanor. Possession of more than one pound of marijuana on one's person or in a public place is a felony punishable by 1 to 10 years. Violation of the home cultivation law

is a Class 6 felony if the individual is cultivating 50 to 100 plants or, if the individual is cultivating more than 100 plants, a felony punishable by imprisonment of 1 to 10 years.

Currently, sale, distribution, or possession with intent to distribute one ounce or less of marijuana is a Class 1 misdemeanor. Distribution of more than one ounce up to five pounds of marijuana is a Class 5 felony, while distribution of more than five pounds and manufacture of marijuana are both felonies punishable by up to 30 years in prison. A third or subsequent conviction for felony distribution of marijuana is punishable by up to life in prison and requires a five-year mandatory minimum prison sentence. The *Code* currently includes additional felonies for transporting certain amounts of marijuana into the Commonwealth, distributing marijuana to a minor, involving a minor in the distribution of marijuana, and distributing near schools or other specified properties.

Analysis:

By expanding the definition of marijuana to cover additional variations of THC, the proposal may expand the applicability of existing misdemeanor and felony offenses. The number of additional individuals who may be convicted of such offenses cannot be estimated with existing data; however, offenders affected by the proposed legislation may be sentenced similarly to those convicted under existing marijuana laws (see table below).

Offenders Convicted of Select Marijuana Offenses (as the Most Serious Offense), FY2021-FY2022

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Distribution of marijuana as accommodation (§ 18.2- 248.1(a,3)) ¹	16	75.0%	25.0%	2.0 mos.	N/A	N/A
Distribution, etc., 1 oz. or less marijuana (§ 18.2-248.1(a,1)) ¹	693	63.9%	36.1%	1.0 mo.	N/A	N/A
Distribution, etc., > 1 oz. to 5 lbs. marijuana (§ 18.2-248.1(a,2)) ²	454	41.2%	38.5%	3.0 mos.	20.3%	1.5 yrs.
Distribution, etc., more than 5 lbs. marijuana (§ 18.2- 248.1(a,3)) ²	61	42.6%	21.3%	6.0 mos.	36.1%	2.0 yrs.
Manufacture marijuana – not for personal use (§ 18.2-248.1(c)) ²	13	53.8%	23.1%	7.0 mos.	23.1%	3.3 yrs.
Distribute marijuana – 3 rd or subseq. conviction (§ 18.2-248.1(d)) ²	1	100.0%	0.0%	N/A	0.0%	N/A
Sell less than 1 oz. marijuana to minor (§ 18.2-255(A,i)) ²	3	33.3%	0.0%	N/A	66.7%	6.0 yrs.
Sell 1 oz. or more marijuana to minor (§ 18.2-255(A,i)) ²	0	N/A	N/A	N/A	N/A	N/A
Transport 5 lbs.+ marijuana into Commonwealth (§18.2-248.01) ²	8	0.0%	12.5%	2.0	87.5%	3.0 yrs.

Notes: The analysis is based on cases in which the specified offense was the primary, or most serious, offense in the sentencing event.

¹ Source: Supreme Court of Virginia's General District Court Case Management System, as analyzed by the Sentencing Commission

² Source: Virginia Criminal Sentencing Commission's Sentencing Guidelines Data System

Impact of Proposed Legislation:

State adult correctional facilities. By potentially expanding existing felony provisions to cover additional variations of THC, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Since the number of individuals who may be convicted as a result of the proposal cannot be determined with available data, the magnitude of the impact on prison beds cannot be quantified.

Local adult correctional facilities. Similarly, the net impact on local-responsible (jail) bed space needs cannot be estimated.

Adult community corrections programs. Because the proposal could result in felony and misdemeanor convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's Sentencing Guidelines. Felony violations under § 18.2-248.1 related to the manufacture or distribution of marijuana (including possession with intent to distribute) are covered by the Sentencing Guidelines. No immediate adjustment to the Guidelines would be necessary under the proposal. However, if the proposal is enacted, the Sentencing Commission in the future would conduct detailed analyses of sentencing patterns to determine if revisions to the Guidelines were necessary.

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.

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 2 of the Acts of Assembly of 2022, Special Session I, 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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