



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2294 Amendment in the Nature of a Substitute (Patron Prior to Substitute –Kilgore)

LD#: 23107328

Date: 02/23/2023

Topic: Tetrahydrocannabinol; hemp products

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0) *
- **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

* 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 exclude certain hemp products, as well as any substance containing a tetrahydrocannabinol isomer, ester, ether, salt, or salts of such isomer, ester, or ether that has been placed by the Board of Pharmacy into one of the schedules in the Drug Control Act (§ 54.1-3400 et seq.). The proposal defines "tetrahydrocannabinol" and removes tetrahydrocannabinol from the Schedule I list of controlled substances and provides that the Board of Pharmacy shall not include any tetrahydrocannabinol isomer, ester, ether, salt, or salts of such isomer, ester, or ether scheduled pursuant to § 54.1-3443 in the definition of marijuana set forth in § 4.1-600, 18.2-247, or 54.1-3401.

In addition, the proposal establishes labeling and packaging requirements for industrial hemp products and creates a civil penalty of up to \$10,000 for certain violations relating to such products. The proposal requires any person who manufactures an industrial hemp extract or food containing an industrial hemp extract to obtain a permit from the Commissioner of Agriculture and Consumer Services and creates a Class 1 misdemeanor and a civil penalty of up to \$10,000 for certain violations.

Legislation adopted by the 2021 General Assembly (Special Session I) legalized possession of up to one ounce of marijuana by persons who are 21 years of age or older and permitted persons 21 years of age or older to cultivate up to four marijuana plants for personal use, effective July 1, 2021. Possession of more than one ounce of marijuana by a person 21 or older is subject to a civil penalty of up to \$25. Possession of four ounces or more 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, under § 18.2-248.1, distribution of 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 distribution of marijuana is punishable by up to life in prison and requires a five-year mandatory minimum prison sentence. The *Code* 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:

The proposal excludes certain hemp products from the definition of marijuana and, as a result, may narrow the applicability of existing misdemeanor and felony offenses. The potential reduction in convictions for marijuana offenses cannot be estimated with existing data. Sentencing outcomes for offenders convicted under existing provisions are shown in the table below. Moreover, data are insufficient to estimate the additional number of Class 1 misdemeanor convictions that may result from enactment of the proposed regulatory requirements for hemp products.

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. Because it likely narrows the applicability of existing felony provisions, the proposal is not expected to increase the state-responsible (prison) bed space needs of the Commonwealth.

Local adult correctional facilities. While the proposal limits the applicability of existing offenses, it also creates new Class 1 misdemeanors related to hemp products. The net impact of the proposal on local-responsible (jail) bed space needs cannot be estimated.

Adult community corrections programs. The net impact of the proposal on adult community corrections programs cannot be determined.

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 is \$0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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