



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 485 (Patron – Ware)

LD#: 12101289

Date: 12/19/2011

Topic: Expungement of marijuana convictions and first offender charges

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposal amends and reenacts §§ 18.2-250.1, 18.2-251 and 19.2-392.2 of the *Code of Virginia* to allow for the expungement of criminal history records. Under the proposal, any person convicted of § 18.2-250.1, first or subsequent possession of marijuana, or sentenced in accordance with the provisions of § 18.2-251, commonly referred to as the first offender statute, may file a petition to have their record expunged. An offender may request expungement of a record after five years have passed since the conviction, discharge or dismissal. The Department of Criminal Justice Services will still maintain a record of the expungement and this information will be available to any attorney for the Commonwealth. After the expungement of the record, the person may lawfully state that he or she has no prior arrest or conviction.

Analysis:

According to data from the General District Court Automated Information System for fiscal years 2010 and 2011, 13,128 offenders were convicted in a first offense of possession of marijuana. The majority (81%) received no active incarceration term to serve. Those sentenced to a local-responsible (jail) term received a median sentence length of 15 days. Of the 1,652 offenders convicted of a subsequent possession of marijuana offense, 48% received a local-responsible (jail) term with a median sentence length of nearly one month; the remaining 52% of the offenders were sentenced to probation without an active term of incarceration.

According to the most recent Sentencing Guidelines data for fiscal years 2010 and 2011, 1,338 offenders entered a plea under § 18.2-251 (first offender statute). In these cases, the judge finds that evidence is sufficient for a finding of guilt, but instead does not enter a judgment. Proceedings are deferred and if the offender completes all ordered probation supervision, terms and other conditions established by the court, the charge is dismissed. During that same period, 328 offenders violated the conditions of their first offender status and were convicted of the felony drug offense.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expunges criminal records that document prior criminal activity and does not expand the number or type of behaviors eligible for criminal prosecution. As a result, it is unlikely that it will impact the future state-responsible (prison) bed space needs of the Commonwealth.

Local adult correctional facilities. Similarly, the proposal is not expected to increase local-responsible (jail) bed space needs.

Adult community corrections programs. The proposal is not expected to affect adult community corrections resources.

Virginia's sentencing guidelines. The sentencing guidelines cover most felony drug crimes that result in § 18.2-251 dispositions and violations of § 18.2-251. However, convictions under § 18.2-250.1 are not covered by the sentencing guidelines as the primary (most serious) offense. Such a conviction, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ) the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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