



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1605 (Patron – Plum)

LD#: 15101924

Date: 12/31/2014

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 Correctional Centers:**
Cannot be determined, likely to be small**
- **Juvenile Detention Facilities:**
Cannot be determined, likely to be small**

** 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 2 of the 2014 Acts of Assembly, Special Session I, 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 and 18.2-258.1, relating to possession and distribution of marijuana for medical purposes. Under the proposal, it would be lawful to possess marijuana if it was obtained directly from, or pursuant to, a valid recommendation of a medical practitioner. Currently, § 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. As a result, the current exception for medical marijuana is not practicable.

Under the proposal, individuals who possess or distribute marijuana or tetrahydrocannabinol (the chemical responsible for most of marijuana's psychological effects) pursuant to a valid recommendation issued by a medical doctor would be exempted from criminal prosecution under state law. Currently, this provision requires a valid prescription and is permitted only for the treatment of cancer or glaucoma.

Finally, the proposal expands § 18.2-258.1 to make it a Class 6 felony to obtain marijuana by forgery or alteration of a medical recommendation or by uttering a false or forged medical recommendation.

Under current *Code*, possession of marijuana in violation of §18.2-250 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. 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, or 5) to make or utter a false or forged prescription. 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 November 5, 2014, 19 states had passed medical marijuana laws allowing for limited use for medical purposes, while four additional states had legalized marijuana for medical and recreational use.¹

Analysis:

According to General District Court Case Management System (CMS) data for fiscal year (FY) 2013 and FY2014, a misdemeanor conviction for simple possession of marijuana was the primary, or most serious, offense in 23,153 cases. Approximately 20% of these offenders received a local-responsible (jail) term, for which the median sentence was 15 days. The majority (80%) did not receive an active term of incarceration to serve after sentencing. Existing data sources do not contain sufficient detail to estimate the number of offenders who might be able to obtain marijuana through a valid medical recommendation, if the proposal were enacted.

Sentencing Guidelines data for FY2013 and FY2014 indicate that 641 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 (73%) of these offenders did not receive an active term of incarceration to serve after sentencing. Approximately 18% of the offenders were given a local-responsible (jail) term, for which the median sentence was three months. The remaining 9% received a state-responsible (prison) term with a median sentence of two years.

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 recommendations 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 adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections cannot be determined.

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.

¹ <http://www.governing.com/gov-data/state-marijuana-laws-map-medical-recreational.html> (accessed December 10, 2014)

Juvenile correctional centers. The Department of Juvenile Justice (DJJ) reports that, while this proposal may cause a limited increase in commitments, the impact of this proposal on bed space needs of juvenile correctional centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on detention center bed space needs will be limited; however, the exact impact 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 2014 Acts of Assembly, 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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