



## Fiscal Impact Statement for Proposed Legislation

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### Virginia Criminal Sentencing Commission

#### House Bill No. 2371 (Patron – Heretick)

LD#: 19100100

Date: 1/7/2019

Topic: 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 2018, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

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#### Summary of Proposed Legislation:

The proposal would establish a system for the regulation of marijuana cultivation facilities, marijuana manufacturing facilities, marijuana testing facilities, and retail marijuana stores, including licensing requirements, by Virginia's Board of Agriculture and Consumer Services. The proposal repeals § 18.2-250.1 and eliminates criminal penalties for possession of retail marijuana (as defined in the proposal) for persons who are 21 years of age or older. The proposal also decriminalizes retail marijuana possession for persons under 21 years of age and specifies a civil penalty of no more than \$50 for a first violation, \$100 for a second violation, and \$250 for a third or subsequent violation. Possession of non-retail marijuana would be a Class 1 misdemeanor. While the proposal repeals § 18.2-248.1 related to the manufacture and distribution of marijuana, the proposal establishes a number of new misdemeanor and felony offenses for engaging in these activities without the required license or otherwise engaging in prohibited practices related to the production, sale, etc., of marijuana. For example, distribution of more than five pounds of marijuana without a license would be a Class 5 felony for the first offense and a Class 4 felony for any third or subsequent offense. Cultivating or manufacturing marijuana in violation of the proposal would be a Class 6 felony. Penalties would be higher, and comparable to penalties in current *Code*, for individuals who distribute large quantities of marijuana without a license as part of a continuing criminal enterprise. Distribution of marijuana to a person under the age of 18, or causing a person under the age of 18 to participate in the unlawful distribution of marijuana, would continue to be criminalized, with punishment ranging from 10 to 50 years with mandatory minimum sentences based on the amount distributed, similar to *Code*. In addition, any person who knowingly makes a false statement to obtain a license required by the proposal would be guilty of a Class 4 felony.

Currently, possession of marijuana is a misdemeanor with a maximum of 30 days in jail for the first offense and a Class 1 misdemeanor for a second or subsequent offense. Distribution of less than ½ ounce of marijuana and distribution of marijuana as an accommodation are also Class 1 misdemeanors.

Distribution of ½ 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.

### Analysis:

While the number of offenders convicted under current marijuana provisions can be identified (see table below), the number of individuals who may be convicted of the new misdemeanors and felonies defined in the proposal, and the sentences these individuals may receive, is not known.

### Offenders Convicted of Select Marijuana Offenses, FY2017-FY2018

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Possession of marijuana – 1 <sup>st</sup> offense (§ 18.2-250.1) <sup>1</sup>	6,409	89.7%	10.3%	10.0 days	N/A	N/A
Possession of marijuana – 2 <sup>nd</sup> or subsequent offense (§ 18.2-250.1) <sup>1</sup>	4,325	73.5%	26.5%	15.0 days	N/A	N/A
Possession of marijuana – Type not clear (§ 18.2-250.1) <sup>1</sup>	13,822	93.6%	6.4%	10.2 days	N/A	N/A
Possession of marijuana - first offender violation (§ 18.2-251) <sup>1</sup>	209	87.6%	12.4%	4.0 days	N/A	N/A
Distribution of marijuana as accommodation (§ 18.2-248.1(a,3)) <sup>1</sup>	19	52.6%	47.4%	1.0 mo.	N/A	N/A
Distribution, etc., less than ½ oz. marijuana (§ 18.2-248.1(a,1)) <sup>1</sup>	1,429	45.1%	54.9%	1.0 mo.	N/A	N/A
Distribution, etc., ½ oz. – 5 lbs. marijuana (§ 18.2-248.1(a,2)) <sup>2</sup>	1,066	35.1%	50.4%	3.0 mos.	14.5%	2.0 yrs.
Distribution, etc., more than 5 lbs. marijuana (§ 18.2-248.1(a,3)) <sup>2</sup>	86	14.0%	23.3%	9.0 mos.	62.8%	2.0 yrs.
Manufacture marijuana – not for personal use (§ 18.2-248.1(c)) <sup>2</sup>	60	35.0%	31.7%	3.0 mos.	33.3%	1.6 yrs.
Distribute marijuana – 3 <sup>rd</sup> or subsequent conviction (§ 18.2-248.1(d)) <sup>2</sup>	5	0.0%	20.0%	0.5 mos.	80.0%	5.0 yrs.
Sell less than 1 oz. marijuana to minor (§ 18.2-255(A,i)) <sup>2</sup>	7	0.0%	0.0%	N/A	100.0%	2.0 yrs.
Sell 1 oz. or more marijuana to minor (§ 18.2-255(A,i)) <sup>2</sup>	0	N/A	N/A	N/A	N/A	N/A

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

<sup>1</sup> Source: Supreme Court of Virginia – General District Court Case Management System (CMS), FY2017-FY2018

<sup>2</sup> Source: Virginia Criminal Sentencing Commission – Sentencing Guidelines Data System, FY2017-FY2018

### Impact of Proposed Legislation:

**State adult correctional facilities.** While proposal would eliminate certain criminal penalties related to marijuana from the *Code* and reduce penalties for other offenses, it would establish a number of new misdemeanors and felonies for engaging in activities related to the cultivation, manufacture, testing and sale of marijuana without the required license or otherwise engaging in prohibited practices related to the production, sale, etc., of marijuana. If enacted, the proposal would also create a new Class 4 felony for

making a false statement to obtain a license required by the proposal. The net effect on the number of convicted individuals and the impact on judicial sentencing patterns cannot be estimated. Therefore, the net impact on the state-responsible (inmate) bed space needs of the Commonwealth cannot be determined.

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

**Adult community corrections programs.** The net effect of the proposal on adult community corrections resources cannot be determined.

**Virginia's sentencing guidelines.** Felony violations under § 18.2-248.1 related to the manufacture or distribution of marijuana are covered by the sentencing guidelines. Convictions under the proposed *Code* sections would not be covered by the guidelines as the primary, or most serious, offense. Such convictions, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. If the proposal were enacted, the Sentencing Commission in the future would conduct detailed analyses of sentencing patterns under the new provisions to determine the feasibility of adding the new felonies to the guidelines system.

**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 2 of the Acts of Assembly of 2018, 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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