

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: HB265

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Heretick

3. Committee: Courts of Justice

4. Title: Marijuana; decriminalization of simple marijuana possession; penalty.

5. Summary: Current law imposes a maximum fine of \$500 and a maximum 30-day jail sentence for a first offense of simple possession of marijuana, a second or subsequent offenses is punishable as Class 1 misdemeanor. This bill decriminalizes marijuana possession and provides a civil penalty instead, with a fine of no more than \$25. Fines assessed for these civil penalties are payable to the Literary Fund.

The bill creates a rebuttable presumption that a person who possesses no more than one-half ounce of marijuana possesses it for personal use. The bill provides that the suspended sentence and substance abuse screening provisions apply only to criminal violations or to civil violations by a minor.

Under current law, the penalty for distribution or possession with intent to sell more than one-half ounce but not more than five pounds of marijuana is punishable as a Class 5 felony. The bill decreases this penalty to a Class 6 felony.

6. Budget Amendment Necessary: No

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

8. Fiscal Implications: Current law imposes a maximum fine of \$500 and a maximum 30-day jail sentence for a first offense for simple possession of marijuana and a second or subsequent offenses is punishable as Class 1 misdemeanor. According to data provided by the Virginia Criminal Sentencing Commission, in FY 2019, there were 13,298 first-offense convictions for possession of marijuana (punishable by at least 30 days in jail). Of these, only 6.4 % served time in jail and 93.6 % were sentenced to probation. The median sentence in local jail was 0.3 months. In FY 2019, there were 2,400 second-offense convictions for possession of marijuana (punishable as a Class 1 misdemeanor with up to 12 months in jail). Of these, 21.7 % served time in jail and the rest were sentenced to probation. The median sentence in jail was 0.3 months. Under the provisions of this bill, these would no longer be criminal offenses. Currently, the state reimburses local correctional facility \$4 per inmate per day for individuals subject to these convictions. As a result, this proposal may decrease the need for jail bed space and thus reduce the number of per diem payments; however, the fiscal impact is minimal.

This bill reduces current criminal offenses for simple possession of marijuana and assesses only a civil penalty. Fines assessed under the provisions of this bill are reduced from \$500 to \$25; fines assessed will continue, as they are currently, to be paid into the Literary Fund. Therefore, the legislation would reduce the revenue deposited into the Literary Fund.

Under current law, Class 5 felonies are punishable by one to ten years in prison when convicted as a felony and up to 12 months in jail when convicted as a misdemeanor. Class 6 felonies are punishable by one to five years in prison when convicted as a felony and up to 12 months in jail when convicted as a misdemeanor. According to data provided by the Virginia Criminal Sentencing Commission, in FY 2019, there were 867 convictions for selling, distributing or possessing with intent to distribute amounts of marijuana over one-half ounce up to five pounds (punishable as a Class 5 felony). Of these, 39.2% served time in jail, with a median sentence of 3.0 months, 12.7% served time in prison, with a median sentence of 1.3 years, and 48.1% were sentenced to probation. Reducing the penalty for distribution or possession with intent to sell more than one-half ounce but not more than five pounds of marijuana from a Class 5 felony to a Class 6 felony may have the effect of reducing time served for such offenses, which may reduce costs to the state; however, given the relatively small population of offenders previously affected and the length of median sentences served, the fiscal impact of this change would likely be minimal.

The proposed legislation removes the suspension and revocation of driver's license as a term or condition of probation. Suspended drivers pay a \$145 reinstatement fee, of which \$100 is directed to the Trauma Center Fund and \$45 is directed to the Department of Motor Vehicles (DMV). With decriminalization, fewer adults will have their licenses suspended for drug related convictions, resulting in a loss of reinstatement fee revenue from drivers whose licenses would have been suspended in the future but for this bill. The magnitude of this loss cannot be determined, as it depends on convictions.

It is known that DMV currently receives \$230,000 annually in reinstatement fees related to drug offenses and the Trauma Center Fund receives \$512,000. Upon passage of this bill, the total revenues for each would decline an indeterminate amount.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Motor Vehicles, Compensation Board, Department of Juvenile Justice, Department of Corrections, local and regional jails.

- 10. Technical Amendment Necessary:** None

- 11. Other Comments:** Additionally, the DMV provides that 23 U.S.C. § 159 of the U.S. Code requires states to either (1) suspend for 6 months the license of an individual after the conviction of a drug offense, or (2) provide the Secretary of the U.S. Department of Transportation with a certification stating that the Governor of such state opposes suspending licenses for the conviction of drug offenses and pass a resolution stating such opposition. In order to comply, this bill could be amended to address these requirements.