

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: HB972

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

2. Patron: Herring

3. Committee: Courts of Justice

4. Title: Possession and consumption of marijuana; penalty.

5. Summary: 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. This bill decriminalizes simple marijuana possession and provides a civil penalty, with a fine of no more than \$50 or no more than \$250 if the person is smoking, consuming, or otherwise ingesting marijuana in a public place at the time of the violation. Civil penalties collected under this legislation would be deposited into the Drug Offender Assessment and Treatment Fund.

The bill provides for a rebuttable presumption that a person who possesses no more than one-half ounce of marijuana possesses it for personal use.

The bill establishes § 18.2-250.2, which prohibits any person from knowingly or intentionally smoking, consuming, or otherwise ingesting marijuana while driving or operating a motor vehicle, engine, train, watercraft, or motorboat. Violations of this provision are punishable by no more than 30 days in jail and a fine of no more than \$500, either or both. Any second or subsequent convictions are punishable as a Class 1 misdemeanor. However, anyone who is charged with a first offense of consuming of marijuana while driving or operating motor vehicle may be placed on probation. If the court does not suspend or revoke the license of anyone placed on probation under this provision, the court must require the accused to comply with a plan of 50 hours of community service.

The bill expands the situations that protect an individual from prosecution to include consumption of marijuana pursuant to § 18.2-250.2.

The bill provides that the suspended sentence and substance abuse screening provisions and driver's license suspension provisions apply only to criminal violations or to civil violations by a juvenile. The bill defines delinquent acts to include a violation of simple possession of marijuana.

Under the provisions of this bill, a civil violation of possession of marijuana will be treated as a conviction for prohibitions on the purchase or transport of a handgun and disqualification for a concealed handgun permit.

The bill establishes § 19.2-389.3, which limits the dissemination of criminal history record information, maintained by the Central Criminal Records Exchange (CCRE) when a charge for possession of marijuana was deferred and dismissed and prohibits employers, educational institutions, and state and local government agencies from asking applicants about any information that is not open for public inspection.

The bill provides that records to the arrest, criminal charge, or conviction of a person for a violation of possession of marijuana, including a charge that was deferred and dismissed, maintained by the Central Criminal Records Exchange (CCRE) is prohibited for public inspection or disclosure. However, dissemination of information is permitted under certain circumstances.

Violation of these provisions are punishable as a Class 1 misdemeanor.

Any violation of possession of marijuana may be charged by summons on a form prescribed by the Office of the Executive Secretary of the Supreme Court of Virginia. The form must contain the option for the person charged to prepay the civil penalty and all costs. Additionally, it requires the clerk of court to certify and forward to the Central Criminal Records Exchange, which is managed by the Virginia State Police (VSP), on a form provided by VSP a copy of any order finding a person in violation of this section, as soon as practicable but not later than the close of business on the next business day following the day on which the order was entered.

- 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 \$50 or no more than \$250 if the person is smoking, consuming, or otherwise ingesting marijuana in a public place at the time of the violation; these fines are to be paid into the

Drug Offender Assessment and Treatment Fund. Currently, the fines assessed under this provision are deposited into the Literary Fund. Therefore, the legislation would reduce the revenue deposited into the Literary Fund.

Moneys in the Drug Offender Assessment and Treatment Fund are appropriated to the Department of Corrections, the Department of Juvenile Justice, and the Commission on Virginia Alcohol Safety Action Program (VASAP) to implement and operate offender substance abuse screening and assessment programs; the Department of Criminal Justice Services for the support of community-based probation and local pretrial services agencies; and the Office of the Executive Secretary of the Supreme Court of Virginia for the support of drug treatment court programs.

The bill establishes a new offense for knowingly or intentionally smoking, consuming, or otherwise ingesting marijuana while driving or operating a motor vehicle, engine, train, watercraft, or motorboat. Violations of this provision are punishable by no more than 30 days in jail and a fine of no more than \$500, either or both. It is assumed, because the bill does not stipulate otherwise, that fines assessed under this provision would be deposited into the Literary Fund. Any second or subsequent convictions are punishable as a Class 1 misdemeanor. Anyone who disseminates criminal history records information that is not open to the public or requires applicant to disclose information that is not open to the public is also subject to a Class 1 misdemeanor charge.

Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail. There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

The proposed legislation removes the suspension and revocation of driver's license as a term or condition of probation except when the proceeding was for consumption of marijuana while operating a motor vehicle, engine, train, watercraft, or motorboat. 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.

The bill requires the Department of Forensic Science (DFS) to perform chemical analysis of plant material involved in a violation of consuming marijuana while driving or operating motor vehicles, as is currently done with violations of marijuana possession. According to DFS, this provision is not expected to impact agency operations.

This bill also requires the Secretaries of Agriculture and Forestry, Finance, Health and Human Resources, and Public Safety and Homeland Security to convene a work group to study the impact on the Commonwealth of legalizing the sale and personal use of marijuana. The bill outlines the requirements of the study and requires that recommendations be reported to the General Assembly and the Governor by November 1, 2021. This provision is not expected to have a fiscal impact on the secretariats.

9. Specific Agency or Political Subdivisions Affected: Department of State Police, Courts, Department of Motor Vehicles, Compensation Board, Department of Juvenile Justice, local and regional jails, Department of Forensic Science, and the Secretaries of Agriculture and Forestry, Finance, Health and Human Resources, and Public Safety and Homeland Security.

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.

The federal statute requires that the Governor's certification be submitted to the Secretary before the first day of the fiscal year, October 1. If a state fails to do so, it will lose eight percent of its annual federal transportation funding. However, while the proposed legislation makes simple possession of marijuana a civil penalty under state law and not a conviction, DMV has not received clarification from the federal government if the simple possession with a civil penalty would be considered a "conviction" under the federal definition.