

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: HB972 ER

House of Origin	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input checked="" type="checkbox"/> Enrolled

2. Patron: Herring

3. Committee: Passed both houses

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 \$25. Civil penalties collected under this legislation would be deposited into the Drug Offender Assessment and Treatment Fund.

Under current law, the definition of marijuana does not include any extract containing one or more cannabinoids unless such extract contains less than 12 percent of tetrahydrocannabinol by weight. The bill changes the definition of marijuana to include any extract containing one or more cannabinoids, and removes hashish oil from the list of Schedule I drugs.

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

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.

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.

The bill provides that any violation of possessing marijuana under § 18.2-250.1 must be charged by summons. A summons for a violation of this section may be executed by a law-enforcement officer when such violation is observed by such officer. The summons used by a law-enforcement officer pursuant to this section must be in form the same as the uniform summons for motor vehicle law violations as prescribed by law (§ 46.2-388). The bill establishes that no court costs will be assessed for violations of possessing marijuana under § 18.2-250.1. The bill also prohibits a person's criminal history record information as defined in § 9.1-101 from including records of any charges or judgments for a violation of § 18.2-250.1, and records of such charges or judgments must not be reported to the Central Criminal Records Exchange. The bill provides sets out the procedure for appeal and trial.

6. **Budget Amendment Necessary:** Yes, Item 39 (Office of Supreme Court). The introduced budget (HB30/SB30) includes \$108,000 in Virginia State Police's budget (Item 425) to cover one-time technology expenses related to the sealing of affected records.
7. **Fiscal Impact Estimates:** Final. 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; 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.

This bill allows for the expungement of a civil offense when a person was acquitted, a nolle prosequi was taken, or the charge was otherwise dismissed. The bill requires that if the charge was for a civil offense, the petitioner is entitled, in the absence of good cause shown to the contrary by the Commonwealth, to expungement of the police and court records relating to the charge, and the court must enter an order of expungement.

The Virginia State Police (VSP) is responsible for expunging records from police files. According to the VSP, the costs associated with sealing affected records is \$108,000, which covers a one-time modification to the computerized criminal history system. The Governor's budget (HB30/SB30) includes \$108,000 in VSP's budget for this purpose.

According to the Office of the Executive Secretary (OES), the three electronic case management systems it maintains would have to be enhanced to allow information from expunged cases to be abstracted and retained for inclusion in statistical reports the Courts provide to the General Assembly concerning proper clerk staffing levels and judicial workload. Currently, the number of expungements completed each year is significantly smaller than the pool of cases that are eligible for expungement. Therefore, a method of accurately retaining the abstracted information is necessary to ensure the accuracy of case-data-based statistical reports generated by OES. The OES would store information for expunged cases in a secure network vault that would not be tied to the personal information of any defendant, but from which basic information about caseloads could be extracted for reporting purposes. The OES estimates a one-time cost to develop, provide quality assurance analysis, and to provide training for court personnel related to system enhancements to be \$299,403.

OES also estimates that the provisions of this bill would increase the workload significantly for court clerks, adding approximately ten additional minutes of work per expungement. Based on historical expungement workload rates, the OES estimates that it will need an additional 1.3 FTE at a cost of \$85,974.

Violations of the terms of § 19.2-389.3, which limits information concerning marijuana possession and criminal history records are punishable as Class 1 misdemeanors. 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 for possession of marijuana. 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.

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

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 lists those agencies and organizations the work group must consult, outlines the requirements of the study, and requires that recommendations be reported to the General Assembly and the Governor by November 30, 2020. 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, 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.

The bill includes an enactment clause that states that this act serves as the resolution of the General Assembly in expressing its opposition to 23 U.S.C. § 159(a)(3)(A), and a third enactment clause that requires the Governor to provide the necessary certifications required pursuant to 23 U.S.C. § 159(a)(3)(B).